United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

For the District of Columbia Circuit

No. 10,739

351

Appeal from the United States District Court for the District of Columbia

INDEX.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,739.

REMINGTON RAND, INC., *Appellant,*

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., ETC., *Appellee,*

and

J. HOWARD McGRATH, Attorney General of the United States, as successor to the Alien Property Custodian, and GEORGIA NEESE CLARK, Treasurer of the United States, *Appellees.*

Appeal from the United States District Court for the District of Columbia.

JOINT APPENDIX.

2080 Filed Oct. 18, 1949

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action

No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S.A. (also known as INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.G.); and formerly named INTERNATIONALE GESELLSCHAFF FUR CHEMISCHE UNTERNEHMUNGEN A.G. (I.G. CHEMIE) and SOCIETE INTERNATIONALE POUR ENTREPRISES CHIMIQUES S.A. (I. G. CHEMIE), A Corporation, Address: Basle, Switzerland, *Plaintiff*,

v.

TOM C. CLARK, Attorney General of the United States, as Successor to the Alien Property Custodian, Address: Department of Justice, and

WILLIAM A. JULIAN, Treasurer of the United States, Address: Treasury Department, *Defendants*,

REMINGTON RAND INC., A corporation, Address: New York, N. Y., *Intervener*.

Complaint of Intervention

Intervener above named, by leave of court first had and obtained, files this, its Complaint of Intervention, against the above-named defendants, and says:

1. Intervener is a corporation duly organized and existing under the laws of the State of Delaware, with a principal office at New York, New York.

2081 2. The principal action arises under the Fifth Amendment to the Constitution of the United States and the Trading with the Enemy Act of October 6, 1917,

as amended, (U.S.C. Title 50, Appendix, Sections 1-38) and particularly Section 9 (a) of said Act which requires the defendants to retain the property pending the outcome of said action.

3. Plaintiff is a corporation organized under the Confederation of Switzerland, has its principal office at Basle, Switzerland and, upon information and belief, is and always has been a citizen of Switzerland.

4. On and prior to February 16, 1942, plaintiff was the owner of 455,624 shares of the Common A Stock and 2,050,000 shares of the Common B Stock of General Aniline & Film Corporation. On February 16, 1942, April 24, 1942 and February 15, 1943, defendant Clark's predecessors, by certain vesting orders, seized said stock and by reason of Executive Order No. 9788, effective October 15, 1946, defendant Clark, as Attorney General of the United States, received said stock and now holds same, all as more particularly alleged in the original complaint herein and as admitted in the answer of the defendant herein.

5. On or before April 22, 1947, Intervener held an option, made and granted to it by the plaintiff in Switzerland, under the terms whereof plaintiff offered to sell to, and agreed to accept an offer by, the Intervener, or one of its group, to purchase aforesaid stock, delivery thereof to be made upon the return of said stock to the plaintiff by the defendant or their successors in office, or any of them, and said delivery to be made against payment by Intervener, or by one of its group, to the plaintiff, of the sum of Twenty Five
2082 Million Dollars ($25,000,000), in the equivalent thereof in Swiss francs at the then current rate of exchange in Basle, Switzerland; and it was further agreed as a term of said option that the plaintiff could, at any time prior to acceptance thereof, cancel said option by failure of Intervener, or one of its group, to accept said offer of the plaintiff to sell said stock and to offer to purchase said stock from the plaintiff within fourteen days after the receipt of a notice of cancellation.

6. On, to wit, April 22, 1947, plaintiff notified Intervener of the termination of said option effective May 6, 1947, a copy of said notice being attached to the Motion filed herewith. On, to wit, May 5, 1947, Intervener, through one of its group, notified plaintiff that, in accordance with the terms of said option, it accepted plaintiff's offer to sell said stock and offered to purchase the same at the stipulated purchase price therefor against delivery of valid stock certificates in good delivery form evidencing the good and lawful transfer of all such shares to Intervener.

7. Intervener is ready, able and willing to perform said option agreement upon delivery of said shares of stock in good delivery form evidencing the good and lawful transfer of all such shares. However, plaintiff has refused and still refuses to recognize the said acceptance of plaintiff's offer to sell such stock and said offer to purchase same, and plaintiff has informed Intervener that it intends to and will repudiate the option agreement and its obligations thereunder and will dispose of said stock in disregard of said option agreement.

8. Intervener is not an enemy or ally of enemy, claims an interest right and title in the said shares of stock held by the defendants, and intervenes in this action to establish such right, title and interest in the said shares of stock.

2083

WHEREFORE, Intervener demands:

(1) That pending further order of this Court, the plaintiff be restrained and enjoined from disposing of any right, title or interest in and to the shares of stock described in the fourth paragraphs of Counts One and Two of the original Complaint herein.

(2) That, if this Court finds that the plaintiff is entitled to the return of the shares of stock described in the fourth paragraphs of Counts One and Two of the original Complaint herein, the Intervener be entitled to establish its right, title and interest in and to said shares of stock.

(3) That, if Intervener shall establish its right, title and interest in said shares of stock, judgment be entered for

Intervener therefor, and for such other and further relief as to this Court may seem just and proper.

(4) Judgment for the costs of this action.

REMINGTON RAND INC.
CUMMINGS, STANLEY, TRUITT & CROSS
By HOMER CUMMINGS
By J. EDWARD BURROUGHS, JR.
1625 K Street, N. W.
Washington, D. C.

FRANK C. STERCK
1615 L Street, N. W.
Washington, D. C.
Attorneys for Intervener

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2319 Filed Apr. 17, 1950

Amended Complaint of Intervention

Intervenor above named, by leave of court first had and obtained, files this, its Amended Complaint of Intervention, and says:

1. Intervenor is a corporation duly organized and existing under the laws of the State of Delaware, with a principal office at New York, New York.

2. The principal action arises under the Fifth Amendment to the Constitution of the United States and the Trading with the Enemy Act of October 6, 1917, as amended, (U.S.C. Title 50, Appendix, Sections 1-38) and particularly Section 9(a) of said Act which requires the defendants to retain the property pending the outcome of said action.

2320 3. Plaintiff is a corporation organized under the Confederation of Switzerland, has its principal office at Basle, Switzerland and, upon information and belief, is and always has been a citizen of Switzerland.

4. On and prior to February 16, 1942, plaintiff was the owner of 455,624 shares of the Common A Stock and 2,050,000 shares of the Common B Stock of General Aniline & Film Corporation. On February 16, 1942, April 24, 1942 and February 15, 1943, defendant McGrath's predecessors, by certain vesting orders, seized said stock and by reason of Executive Order No. 9788, effective October 15, 1946, defendant McGrath, as Attorney General of the U. S. received said stock and now holds same, all as more particularly alleged in the original complaint herein.

5. On June 6, 1946, representatives of plaintiff, pursuant to resolution of its Board of Directors, orally made a binding declaration to representatives of Remington Rand that plaintiff would accept a licensed offer for the sale of its participation in GAF, if

(a) such an offer were submitted to plaintiff within a specified time by the Union Bank of Switzerland, or by one of the groups represented by that bank, and provided

(b) such offer contained a binding obligation to pay as purchase price, first, the sum of twenty-five million dollars ($25,000,000); second, eighty thousand (80,000) shares of Interhandel; and third, the sum of approximately two million dollars ($2,000,000) representing former bank and dividend accounts to be at the free disposal of Inter-
2321 handel; and provided, further

(c) such offer was equipped with the following conditions: first, that the $25,000,000 shall be transferred into free Swiss francs available at Basle or transferred to the corresponding amount of gold at the disposition of Interhandel at the Swiss National Bank; second, that the $2,000,000 shall be entirely free in the United States; and third, that all blacklist discrimination against plaintiff and also against various of its associated companies, stockholders and other individuals, because of their relationship to the plaintiff, should be removed; it being understood that after fulfillment of all of these conditions plaintiff would be bound to accept such offer and transfer its participation

in General Aniline & Film Corporation to Remington Rand.

6. On, to wit, April 22, 1947, plaintiff notified Intervenor of the termination of said binding declaration of June 6, 1946, effective May 6, 1947. On, to wit, May 5, 1947, Intervenor, through one of its group, and in accordance with the terms of said binding declaration, submitted to plaintiff an offer to purchase said stock at the stipulated purchase price therefor against delivery of valid stock certificates in good delivery from evidencing the good and lawful transfer of all such shares to Intervenor, and offered to work out all of the details and conditions involved in the consummation of the matter.

7. Intervenor is ready, able and willing to perform said agreement upon delivery of said shares of stock in
2322 good delivery form evidencing the good and lawful transfer of all such shares. However, plaintiff has refused and still refuses to recognize the said offer to purchase such stock and plaintiff has informed Intervenor that it intends to and will repudiate said binding declaration and agreement, and its obligations thereunder, and will dispose of said stock in disregard thereof.

8. Intervenor is not an enemy or ally of enemy, claims an interest, right and title in the said shares of stock held by the defendants, and intervenes in this action to establish such right, title and interest in the said shares of stock.

WHEREFORE, Intervenor demands:

(1) That pending further order of this Court, the plaintiff be restrained and enjoined from disposing of any right, title or interest in and to the shares of stock described in the fourth paragraphs of Counts One and Two of plaintiff's Complaint herein.

(2) That if the Court finds the plaintiff is entitled to the return of such shares of stock the Intervenor have a declaratory judgment that it is entitled to such shares of stock when all of the conditions enumerated in Paragraph 5(c) of this Amended Complaint of Intervention have been fulfilled.

(3) For such other further relief as to this Court may seem just and proper.

REMINGTON RAND INC.
CUMMINGS, STANLEY, TRUITT & CROSS
By J. EDWARD BURROUGHS, JR.

2323

By ALBERT L. REEVES, JR.
GEORGE C. PENDLETON
1625—K—Street, N. W.
Washington 6, D. C.

FRANK C. STERCK
1615—L—Street, N. W.
Washington, D. C.
Its Attorneys for Intervenor

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2149 Filed Jan. 28, 1950

Answer of Societe Internationale, etc.

For answer to the complaint of intervention filed by the Intervenor Remington Rand, Inc., the plaintiff Societe Internationale Pour Participations Industrielles et Commerciales S. A. says:

(1) The plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

(2) The plaintiff admits that the Court has jurisdiction of the principal action under the Constitution and under the Trading with the Enemy Act as amended, and that the defendants are required to retain the property involved in this action pending the outcome of said action. It denies, however, that this court has jurisdiction to determine the issues raised by the complaint of intervention.

2150 (3) The plaintiff admits that it is a corporation organized under the Confederation of Switzerland, that it has its principal office at Basle, Switzerland, and that it is and always has been a citizen of Switzerland.

(4) The plaintiff admits that on and prior to February 16, 1942, it was the owner of 455,624 shares of the Common A Stock and 2,050,000 shares of the Common B Stock of General Aniline & Film Corporation, and that on February 16, 1942, April 24, 1942, and February 15, 1943, the predecessors of the present defendants J. Howard McGrath, Attorney General, and others by certain vesting orders, seized said stock, and by reason of Executive Order No. 9788, effective October 15, 1946, the former defendants Tom Clark, as Attorney General of the United States, and others, received said stock, and that the present defendants J. Howard McGrath, as Attorney General of the United States, and others, now hold the same, all as more particularly alleged in the original complaint herein and as admitted in the answer of the defendants herein.

(5) The plaintiff denies all allegations of paragraph 5 of the intervening petition, and denies that the intervener has ever had an option granted to it by the plaintiff.

(6) The plaintiff states that on April 21, 1947, it gave notice to the Intervener as follows:

2151

"April 21, 1947,
Remington Rand Inc.,
Stamford, Connect. U.S.A.

Attention of Mr. Bill Shorten, Hotel Trois Rois, Basel

Dear Sirs,

We beg to inform you that we have given again your demand for an option agreement the most serious consideration. However we have to state that we are still not convinced that the procedure proposed by you is the best and the only way to protect our interests. We think also that it is absolutely necessary for us, in view of our responsibility towards our shareholders, to continue our own discussions with the U.S. Department of Justice, before any private agreements can be accepted by us. As we are feeling furthermore that the U.S. Government is not agreeable, for the

present, to any priority of any private American party we deem it necessary to cancel the Gentlemen's Agreement existing between us, by giving the 15 days' notice, the agreement therefore being ended on May 6th. But we beg to emphasize our readiness to continue our negotiations if it suits you too and to try to find a mutually satisfactory solution for our problems.

Yours truly,

Internationale Industrie &
Handelsbeteiligungen A. G.
Iselin Germann"

The plaintiff states that the "Gentlemen's Agreement" therein referred to was an understanding between the plaintiff and the intervener that the intervener would endeavor to have the stock in question released by the appropriate United States Government Agencies, and to have other conditions hereinafter referred to satisfied, and that if the stock in question was actually returned to the plaintiff by the appropriate United States Government Agencies, and if the other conditions hereinafter referred to were satisfied, before the expiration of the term of the "Gen-
2152 tlemen's Agreement", the plaintiff would then be willing to accept an offer from the intervener to purchase the stock for $25,000,000 converted into Swiss francs at the official rate or the equivalent value of gold ingots to be then paid by the intervener to the plaintiff in Basle, but that, if the plaintiff gave the intervener notice of termination of the "Gentlemen's Agreement", such agreement would be terminated 15 days thereafter, unless the stock had actually been returned to the plaintiff and all other conditions fulfilled before the end of said 15 days. This "Gentlemen's Agreement" provided further that there would also be delivered to the plaintiff and that the plaintiff would retain, in addition, to the sum of $25,000,000 mentioned above, 52,000 fully paid common shares of plaintiff and 28,000 half paid common shares of plaintiff together with

plaintiff's former bank accounts in the United States and dividends from General Aniline and Film for 1940 and 1941 payable to plaintiff, all of which shares, bank accounts, and dividends were then in the possession of United States Government Agencies, and that all discrimination in the United States against plaintiff, members of its Board of Directors, members of its administration, and preferred stockholders Industriebank A. G., Basle, and Societe Auxiliare de Participations et de Depots S. A., Lausanne, members of their Boards of Directors, and all persons of their relationships to plaintiff, would be removed. The
2153 "Gentlemen's Agreement" also included an understanding that the plaintiff would not take any initiative to start negotiations with other private parties but would be free to receive proposals by third parties. This "Gentlemen's Agreement" was in no sense an option or contract either by the law of Switzerland or by the law of the United States or any State thereof. It was terminated according to its terms by the notice quoted above and by the fact that the stock was not delivered to the plaintiff and the other conditions of the "Gentlemen's Agreement" were not fulfilled within 15 days of such notice.

Thereafter a cable was sent to the plaintiff from New York dated May 5, 1947, as follows:

"INTERHANDEL, BASEL.

REFERENCE IS NOW MADE TO THE AGREEMENT PARTLY WRITTEN AND PARTLY ORAL AS SUPPLEMENTED AMENDED MODIFIED AND EXTENDED FROM TIME TO TIME FOR THE PURCHASE OF ALL YOUR SHARES OF GAF STOCK OF BOTH CLASSES WHICH YOU CANCELLED EFFECTIVE MAY 6 1947 BY YOUR LETTER TO REMINGTON RAND OF APRIL 22 LAST THE AGREEMENT AFORESAID AS SUPPLEMENTED AMENDED AND MODIFIED IS HEREINAFTER REFERRED TO AS "THE AGREEMENT" THE UNDERSIGNED IS A GROUP REPRESENTED BY UNION BANK OF SWITZERLAND AND THE ASSIGNEE OF REMINGTON RAND INC THE UNDERSIGNED DOES HEREBY MAKE AN OFFER TO PURCHASE FROM YOU ALL THE SHARES OF GAF OF BOTH CLASSES OWNED BY YOU ON APRIL 24 1942 AT THE AGREED PURCHASE PRICE THEREFOR OUR ELEC-

TION TO PURCHASE ALL OF SUCH SHARES AS HEREIN PROVIDED SHALL BE DEEMED TO BE AND SHALL CONSTITUTE AN ACCEPTANCE BY US OF YOUR AGREEMENT TO ACCEPT AN OFFER FOR THE SALE OF THE GAF SHARES AFORESAID WE WILL PAY YOU THEREFOR THE AGREED PURCHASE PRICE AGAINST DELIVERY TO US WITHIN A REASONABLE TIME OF VALID STOCK CERTIFICATES IN GOOD DELIVERY FORM EVIDENCING THE GOOD AND LAWFUL TRANSFER OF ALL SUCH SHARES TO US THE NECESSARY LICENSES AND CONSENTS OF THE COMPETENT U S AUTHORITIES TO MAKE THIS OFFER HAVE ALREADY BEEN OBTAINED WE REGRET THE NECESSITY OF DIRECTING TO
2154 YOUR ATTENTION THE VIOLATION OF YOUR OBLIGATIONS IN THE TWO FOLLOWING IMPORTANT ASPECTS FIRSTLY YOUR REPRESENTATIVE IS NOT COOPERATING INTENSIVELY WITH REMINGTON RAND AS YOU EXPRESSLY AGREED AND SECONDLY UPON YOUR INITIATION YOU ARE NEGOTIATING WITH OTHERS FOR THE SALE OF THE GAF SHARES AFORESAID CONTRARY TO YOUR SOLEMN OBLIGATION IF YOU SO DESIRE WE ARE PREPARED TO EXPRESS IN WRITING ALL THE NECESSARY AND INCIDENTAL MATTERS NECESSARILY CONNECTED WITH THE CONSUMMATION OF THIS ENTIRE MATTER AND WE REQUEST THAT AS YOU HAVE AGREED YOU IMMEDIATELY SEND TO THE U S A DULY AUTHORIZED DELEGATION OF YOUR COMPANY TO ACT FOR YOU IN ORDER TO DETERMINE ALL SUCH DETAILS ASSURING YOU OF OUR DESIRE TO COOPERATE FULLY WITH YOU IN ALL RESPECTS AS CONTEMPLATED BY THE SPIRIT AND LETTER OF THE AGREEMENT WE AWAIT YOUR PROMPT ADVICES OF THE EARLY ARRIVAL HERE OF YOUR DULY AUTHORIZED DELEGATES FOR THE PURPOSE AFORESAID AMERICAN ANILINE AND CHEMICAL CO INC BY C PROCTOR BRADY PRESIDENT".

The plaintiff also received a cable from New York from James H. Rand, president of the intervener, dated May 5, 1947, as follows:

"DR. FELIX ISELIN PRESIDENT INTERHANDEL, BASEL. MR. PRESIDENT REMINGTON RAND INC HAS ASSIGNED TO AMERICAN ANILINE AND CHEMICAL COMPANY INC ALL ITS RIGHT TITLE AND INTEREST IN AND TO THE AGREEMENT BETWEEN US FOR THE PURCHASE OF ALL YOUR COMPANY GAF SHARES WHICH YOUR COMPANY RECENTLY NOTIFIED US YOU WERE CANCELLING AS OF MAY 6 AMERICAN ANILINE IS ASKING THAT AN AUTHOR-

IZED DELEGATION OF YOUR CORPORATION COME TO THIS COUNTRY FOR THE PURPOSE OF CONCLUDING ALL THE DETAILS CONNECTED WITH THE GAF TRANSACTION MAY I THEREFORE INVITE YOU AND DR. STURZENEGGER TO BE OUR GUEST WHILE YOU ARE IN THIS COUNTRY LOOKING FORWARD WITH PLEASURE TO MEETING YOU BOTH JAMES H RAND JR PRESIDENT REMINGTON RAND INC".

The plaintiff also received on May 6, 1947, a letter signed by William E. Shorten, Vice President of American Aniline and Chemical Co., Inc., as follows:

2155 "American Aniline and Chemical Co., Inc.
1 Atlantic St., Stamford, Conn.

Internationale Industrie
& Handelsbeteiligungen A. G.
Basel 2 Switzerland

Dear Sir:

I hereby confirm cable this day sent to you reading as follows:

(Here cable of May 5, 1947, from American Aniline and Chemical Co. is quoted.)

Kindly acknowledge receipt of this letter by signing and returning a carbon copy thereof herewith enclosed.

Very truly yours,

American Aniline and Chemical Co., Inc.
WM. E. SHORTEN
Vice President"

Plaintiff thereupon acknowledged receipt of the above communications in a letter dated May 7, 1947 as follows:

"American Aniline and Chemical Co., Inc.
New York.
Attention of Mr. Bill Shorten, Hotel Trois Rois, Basel.

Dear Sirs:

We hereby acknowledge receipt yesterday of cable and letter, copies attached.

This is without prejudice and does not constitute more than a mere acknowledge of receipt.

Our omission to act at the moment, or to comment in this acknowledgement, in respect of the contents and subject matter of your cable and letter, cannot be construed as an acquiescence in any phase of said contents or in your action regarding the subject matter thereof. All reservations are made by us in respect thereof.

Yours truly,

Internationale Industrie
& Handelsbeteiligungen A. G.
Iselin Sturzenegger"

2156 Plaintiff thereafter sent a cable dated May 17, 1947, as follows:

"J. H. Rand President Remington Rand Inc.
Stamford Conn.

received your cable 5th stop very much disappointed by your attempt to distort our gentlemens agreement stop reject the idea that any contract between ourselves and remington or aacc or anybody else of your group exists as main preceding conditions of gentlemens agreement are not at all fulfilled stop reserve unto ourselves all possible positions in support of our standpoint and in denial of the effectiveness of the action attempted by you stop as to aacc we reject the idea of their being a participant in our discussions or a party to our gentlemens agreement which by its very nature was strictly personal and not assignable stop we decline to regard aacc as an acceptable participant with us in the contemplated gaf deal stop today we have written two letters to mr richner which might be translated as follows german text to be considered as sole original version first letter quote reference is had to the cable from aacc dated may 5th receipt of which has been separately acknowledged stop we were very much surprised to receive this cable which to us seems ill-advised stop we beg to inform you that we

must decline to recognize both the offer and election and the alleged acceptance of aacc referred to and made in the forepart of the cable stop Moreover we cannot regard aacc as having participated in any way in our discussions or in the subject-matters thereof stop we deny that such action on the part of aacc as described in the cable constitutes a contract between us or that a contract exists between ourselves and aacc or remington or that we have any liability of any kind to aacc or remington or to anyone else in the premises stop finally we wish to state that we reserve unto ourselves all possible positions in support of the foregoing and in denial of the effectiveness of the attempted action by aacc stop as to our readiness to continue our discussions with remington as expressed in our letter to mr bill shorten vice-president of remington of april 21 1947 we have to state that this readiness is now subject to the acknowledgement by remington that no agreement of whatsoever kind is existing between us and remington or any alleged assignee or representative of them since the expiration of the gentlemens agreement on may 6th 1947 stop unquote second letter

2157 quote in further reference to the cable from aacc dated may 6th we beg to inform you that we would have to reject the idea of a violation by us of our gentlemens agreement if such a reproach would be raised by you or remington stop coming from aacc as it did in the latter part of the cable it is irrelevant stop unquote

Interhandel''

Receipt of plaintiff's cable of May 17, 1947, was acknowledged by a cable to plaintiff from New York signed J. H. Rand and dated May 20, 1947, as follows:

''INTERHANDEL, BASEL

RECEIVED YOUR CABLE MAY 17TH WHICH I AM REFERRING TO AMERICAN ANILINE AND CHEMICAL COMPANY FOR THEIR INFORMATION STOP MR SHORTEN CAN TELL YOU ABOUT OUR ATTITUDE AND POSITION IN THIS WHOLE MATTER LARGELY RESULTING FROM DECISION GIVEN TO ME AND MR SCHEISS AT ROCKLEDGE

REGARDING YOUR REFUSAL TO REGISTER SHARES PURCHASED FOM HYDRO NORWAY BEING ENTIRELY AN ARBITRARY MATTER WITHIN YOUR JURISDICTION AND INVOLVING TREMENDOUS POTENTIAL LOSSES WITHOUT JUSTIFICATION.

J. H. RAND"

Thereafter, plaintiff received a letter from American Aniline and Chemical Co., Inc., Room 1418, 165 Broadway, New York 6, New York, signed by S. Proctor Brady, its president, dated May 28, 1947, as follows:

"Internationale Industrie und Handelsbeteiligungen A. G.
Basle, Switzerland

Sirs:

Mr. James H. Rand, Jr. has transmitted to us a copy of your cable, dated May 19, 1947.

The option to which your cable refers has been validly assigned to us by Remington Rand Inc. and has been exercised and accepted by us within the time provided and upon the terms thereof and we shall hold you to a strict accountability to keep and perform your obligations to us by delivering the securities to which we are now en-
2158 titled. Upon such delivery we will pay to you the stated purchase price.

It is a matter of regret that your decision to terminate the option as of May 6th last compelled us to exercise our rights prior to such date but that was your decision and our election necessarily followed within the time fixed by you.

Awaiting your prompt reply, we are

Very truly yours

American Aniline & Chemical Company, Inc.
By S. Proctor Brady
President"

Plaintiff replied thereto in a letter mailed to American Aniline and Chemical Co., Inc., 165 Broadway, New York 6, New York, dated June 16, 1947, as follows:

"Sirs:

We acknowledge receipt of your letter of May 28, 1947. Although, as heretofore stated, we do not regard you as a participant to any discussions or as a party to any agreement with us at any time, we want to reject once for all the attempt by you or anybody else to allege that an option agreement has been existing at any time between Remington Rand Inc. and/or any alleged assignee of Remington Rand Inc. and us.

As your other allegations are inconsistent with the foregoing we do not see any reason further to argue with you about them.

Very truly yours

Internationale Industrie
& Handelsbeteiligungen A. G.
Iselin Germann"

Plaintiff's letter of June 16, 1947, quoted immediately above, was subsequently returned unopened to plaintiff, the envelope bearing post office stamps indicating that the
2159 addressee, American Aniline and Chemical Co., Inc., was unknown.

Except to the extent that the foregoing may coincide with statements of paragraph 6 of the intervening petition, the plaintiff denies all the allegations of said paragraph.

(7) The plaintiff admits that it has refused and still refuses to recognize that it has any contract with the intervener. The plaintiff denies all other allegations of paragraph 7 of the complaint of intervention.

(8) The plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations that intervener is not an enemy or ally of enemy, and denies all other allegations of paragraph 8 of the complaint.

The plaintiff denies all allegations of the complaint of intervention not specifically admitted.

Answering further the plaintiff says:

(a) This Court has no jurisdiction over the subject matter of the complaint of intervention.

(b) This Court has no jurisdiction over the person of the plaintiff for the purpose of said complaint of intervention.

(c) The complaint of intervention does not state a cause of action against the plaintiff.

(d) The plaintiff has never entered into an option agreement or any contract with the intervener, and there has been no breach of contract by the plaintiff.

2160 (e) The purported option asserted by the intervener is void because there is no claim that there was any consideration therefor.

(f) The purported option asserted by the intervener is against public policy and void and unenforceable because any consideration therefor consisted of a promise to influence officials of the United States Government.

(g) The option asserted by the intervener, if any there was, was procured by the fraud of the intervener in falsely representing to the plaintiff that the intervener could influence officials of the United States Government to release the stock in question, to secure or obtain return to plaintiff by the United States Government or to release from Foreign Funds Control other property of plaintiff, and to abrogate other discriminations against plaintiff and others.

(h) The purported option agreement asserted by the intervener is void in that such option agreement would have been in violation of the laws of the United States, in that no Treasury license had been given therefor.

(i) The purported option agreement asserted by the intervener is void in that such option agreement would have been in violation of the laws of Switzerland, in that the Swiss Compensation Office had blocked the assets of the plaintiff, so that the plaintiff could not sell or give

2161 an option to sell any of its capital assets, or the stock

in question, without a license from the Swiss Compensation Office, and the plaintiff had no such license during the period in question.

(j) The purported option asserted by the intervener cannot be enforced because it violates the statute of frauds, in that the intervener has received no part of the goods and has given nothing in earnest to bind the bargain or in part payment, and there is no note or memorandum in writing of said bargain signed by the parties to be charged or their agents.

(k) The case is not one for specific performance.

(l) The intervener had no contract or option with the American Aniline and Chemical Company, who purported to exercise the option, and any purported option with the intervener was of a personal nature and could not be assigned.

(m) The claim of the intervener is void and unenforceable in that it violates the public policy favoring settlement of litigation, prolongs litigation against the United States, and attempts to destroy the authority of the plaintiff to settle its claim against the United States.

WHEREFORE the plaintiff prays that the complaint of intervention be dismissed.

SPENCER GORDON
DONALD HISS
Union Trust Building
Washington 5, D. C.
Attorneys for Plaintiff

Covington, Burling, Rublee,
O'Brien & Shorb
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Washington 5, D. C.

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2143 Filed Jan. 24, 1950

Answer to Complaint of Intervention

The defendants, J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and Georgia Neese Clark, Treasurer of the United States, for their Answer to the Complaint of Intervention herein, alleges:

First Defense

The Complaint of Intervention fails to state a claim upon which relief can be granted.

Second Defense

1. Intervenor has failed to file with defendant McGrath's predecessors a notice of claim for the shares of stock described in paragraph 4 of the Complaint of Intervention, within the time limit prescribed by the Trading with the Enemy Act, as amended (U.S.C., Title 50, Appendix §1, *et seq.*), particularly §33 thereof.

2. Intervenor has not filed its Complaint of Intervention within the time limit prescribed by the Trading with the Enemy Act, as amended (U.S.C., Title 50, Appendix §1, *et seq.*), particularly §33 thereof.

2144 Third Defense

The alleged agreement set forth in the Complaint of Intervention is illegal, void, prohibited and unenforceable, particularly for reasons that:

1. It is void and unenforceable in that it is an assignment of a claim against the United States, void under U.S.C., Title 31, §203;

2. It is illegal, void, prohibited and unenforceable under the Trading with the Enemy Act (U.S.C., Title 50, Appendix §1, *et seq.*), Executive Orders and regulations issued there-

under, particularly §3 of said Act, and §§3 and 5(b) of said Act because it is a purported transfer of an interest in property without prior license or permission as required particularly by Executive Order No. 8389 (5 F.R. 1400), as amended, and General Order No. 31 of the Alien Property Custodian (9 F.R. 7739, as amended; 8 C.F.R., 1946 Supp., §503.5);

3. It is void, prohibited and unenforceable in that plaintiff was not granted a license or other authorization permitting the alleged agreement, as required by the laws of the Confederation of Switzerland;

4. It is unenforceable for noncompliance with the statute of frauds;

5. It is unenforceable because of lack of consideration;

6. It is void and unenforceable in that it violates the public policy favoring settlement of litigation, in that it prolongs litigation against the United States and attempts to destroy the authority of the plaintiff to settle its claim against the United States.

FOURTH DEFENSE

Specifically answering the allegations contained in the numbered paragraphs of the Complaint of Intervention, defendents deny each and every allegation contained in the paragraphs of the Complaint of Intervention (and not merely the allegations of paragraphs which are in their entirety expressly denied below), except those paragraphs or allegations as are hereinafter expressly, and not by implication, admitted:

2145

1. Admit, on information and belief, the allegations of paragraph 1.

2. Admit that the principal action is brought and the jurisdiction of the court in invoked under the Fifth Amendment to the Constitution of the United States and the Trad-

ing with the Enemy Act, as amended (U.S.C., Title 50, Appendix, §1, *et seq.*) and particularly §9(a) thereof.

3. Admit, on information and belief, that the plaintiff is a corporation organized under the laws of the Confederation of Switzerland.

4. Admit that on February 16, 1942, the Secretary of the Treasury executed and issued a Vesting Order, whereby, *inter alia,* 445,448 shares of Common A stock and 2,050,000 shares of Common B stock of General Aniline & Film Corporation were vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order is filed with and published in the Federal Register (7 F.R. 1046). A certified copy thereof is attached to the Answer of the defendants in the principal action as Exhibit A and by reference incorporated therein.

Admit that on April 24, 1942, the Alien Property Custodian executed and issued Vesting Order No. 5, whereby the shares of stock of General Aniline & Film Corporation covered by the aforementioned Vesting Order issued by the Secretary of the Treasury on February 16, 1942, were vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order No. 5 is filed with and published in the Federal Register (7 F.R. 3148). A certified copy thereof is attached to the Answer of the defendants in the principal action as Exhibit B and by reference incorporated therein.

2146

Admit that pursuant to Vesting Order No. 5 the Secretary of the Treasury delivered, transferred and assigned to the Alien Property Custodian, *inter alia,* 445,448 shares of Common A stock and 2,050,000 shares of Common B stock of the General Aniline & Film Corporation.

Admit that on February 15, 1943, the Alien Property Custodian executed and issued Vesting Order No. 907, whereby, *inter alia,* 176 shares of Common A stock of General Aniline & Film Corporation were vested under the

Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order is filed with and published in the Federal Register (8 F.R. 2453). A certified copy thereof is attached to the Answer of the defendant in the principal action as Exhibit C and by reference incorporated therein.

Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F.R. 11981, error corrected in 11 F.R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order, 455,624 shares of Common A stock and 2,050,000 shares of Common B stock of General Aniline & Film Corporation, vested under the Vesting Order of February 16, 1942 and under Vesting Order No. 5 and Vesting Order No. 907, were transferred to and are now in the possession of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

2147 5. Are without knowledge or information sufficient to form a belief as to the truth of, and therefore deny, the allegations of paragraph 5.

6. Are without knowledge or information sufficient to form a belief as to the truth of, and therefore deny, the allegations of paragraph 6.

7. Are without knowledge or information sufficient to form a belief as to the truth of, and therefore deny, the allegations of paragraph 7.

8. Admit that the intervenor purports to intervene in this action to establish a right, title and interest in the aforesaid shares of stock, but deny that the intervenor has any such right, title or interest in the aforesaid shares. Admit that intervenor is not an enemy or ally of enemy.

WHEREFORE:

1. the defendants demand judgment dismissing the Complaint of Intervention herein, together with the costs and disbursements in the action.

Dated: Washington, D. C.
January 24, 1950.

HAROLD I. BAYNTON
Acting Director, Office of Alien Property

DAVID SCHWARTZ
Special Assistant to the Attorney General

SIDNEY B. JACOBY
Attorney

PAUL E. MCGRAW
Attorney

DAVID A. WILSON, JR.
Attorney

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OLGA H. HOFFMAN
Attorney

ANTHONY W. GROSS
Attorney

Department of Justice
Washington 25, D. C.
Attorneys for Defendants

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2324 Filed Apr. 26, 1950

Answer of Societe Internationale, etc. to Amended Complaint of Intervention

For answer to the amended complaint of intervention filed by the intervener Remington Rand, Inc., the plaintiff Societe Internationale Pour Participations Industrielles et Commercieles S. A. adopts by reference its answer to the original complaint of intervention, and, without repeating the same, makes it its answer to the amended complaint of intervention.

WHEREFORE the plaintiff prays that the amended complaint of intervention be dismissed.

SPENCER GORDON
DONALD HISS
Union Trust Building
Washington 5, D. C.
Attorneys for Plaintiff

Covington, Burling, Rublee,
O'Brien & Shorb
Union Trust Building
Washington 5, D. C.

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2326 Filed Apr. 26, 1950

Answer to Amended Complaint of Intervention

The defendants, J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and Georgia Neese Clark, Treasurer of the United States, for their Answer to the Amended Complaint of Intervention filed by intervenor plaintiff, Remington Rand Inc., adopt by reference their answer to the original Complaint of Intervention, and, without repeating the same, make it their Answer to the Amended Complaint of Intervention.

WHEREFORE the defendants demand judgment dismissing the Amended Complaint of Intervention, together with the costs and disbursements in the action.

April 25, 1950

HAROLD I. BAYNTON
Acting Director, Office of Alien Property
DAVID SCHWARTZ
Special Assistant to the Attorney General
SIDNEY B. JACOBY; PAUL E. McGRAW; DAVID A. WILSON, JR.; ANTHONY W. GROSS & OLGA H. HOFFMAN
Attorneys
Department of Justice
Attorneys for Defendants

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2318 Filed Mar. 31, 1950

Memorandum

Upon full consideration of the evidence and summations of counsel, and after review of the record, I have come to the conclusion that Intervener has failed to establish, by a preponderance of the evidence, the basic element of its claim, namely, the existence of the agreement between itself and plaintiff on which it relies and as particularly described in the complaint of intervention and pretrial statement; and having failed in this regard, it is not entitled to the relief prayed, and judgment should be entered against it accordingly.

Counsel will submit findings of fact and conclusions of law, and judgment.

DAVID A. PINE,
Judge

March 31, 1950

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2328 Filed Apr. 26, 1950

Suggested Findings on Behalf of Intervenor, Remington Rand Inc.

1. Remington Rand Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal office at New York, New York. Interhandel is a corporation organized under the Confederation of Switzerland with its principal office at Basle, Switzerland.

2. On February 16, 1942, April 24, 1942, and February 15, 1943, the predecessors of the present defendants J. Howard McGrath, Attorney General, and others, by certain vesting orders seized 455,624 shares of common A stock and 2,050,000 shares of common B stock of General Aniline & Film Corporation owned by Interhandel, and by reason of Executive Order No. 9788 effective October 15, 1946, the former defendants Tom Clark, as Attorney General of the United States, and others received said stock, and
2329 the present defendants J. Howard McGrath, as Attorney General of the United States, and others now hold the same.

3. On or about June 6, 1946, Interhandel, through its duly authorized representatives made the following oral statement or offer (which they called a "declaration of readiness") to the Remington Rand Group, through certain officials of the Union Bank of Switzerland who were acting for Remington Rand in the matter:

If the Remington group would assist Interhandel in having its property released by the appropriate United States Government agencies, and if the property was recovered, Interhandel would accept an offer to sell to the Remington group its participation in General Aniline & Film Corporation, provided the offer contained in a legal binding way an engagement to pay as the purchase price to Interhandel

$25,000,000 and

52,000 full paid common shares of Interhandel

28,000 half paid common shares of Interhandel and furthermore, an amount of approximately $2,000,000 from former bank accounts and dividend accounts to stand at the free disposal of Interhandel.

4. According to the "declaration of readiness" Remington Rand, or one of its group, was required to make the offer referred to in Paragraph 3 hereof to Interhandel on or before June 30, 1946. This time limit was extended from time
2330 to time to April 15, 1947, and cancellable thereafter on fifteen days' notice.

5. Certain stockholders of Interhandel, both corporate and individual, by reason of their connection with Interhandel, were on the United States' "black list" and in addition thereto the property of some of them was "blocked" by the Treasury Department of the United States. In making the "declaration of readiness" the representatives of Interhandel stated that before they would accept the offer to sell their stock in General Aniline & Film Corporation, the property had to be recovered and the discriminations against their majority stockholders had to be removed. It was the contemplation of all parties connected with the transaction that if Interhandel's propery was returned to it by the United States authorities the so-called discriminations would automatically be removed.

6. Herein a valid preliminary contract came into being by virtue of Interhandel's June 6, 1946 "declaration of readiness" binding itself to accept an offer and thereafter make conveyance of its G.A.F. stock after the performance of the conditions set forth in Paragraph 5 above, and by the required binding offer being made within the specified time.

7. Under the law of Switzerland a party may by contract bind himself to enter into a future contract.

8. Remington Rand undertook to assist Interhandel in the recovery of its property, but Interhandel refused to give it the necessary authority (a written option and power of attorney) with which to continue its efforts. On October
2331 9, 1946, Remington Rand caused to be formed a wholly

owned subsidiary known as American Aniline & Chemical Company for the purpose of purchasing the General Aniline & Film stock. This company had the financial support of Remington Rand and those facts were made known to Interhandel as early as December 23, 1946. In subsequent discussions concerning the transaction, no objection to the plan to have American Aniline & Chemical Company purchase the stock was raised by any representative of Interhandel.

9. On, to wit, April 22, 1947, Interhandel notified Remington Rand of the termination of said binding declaration of June 6, 1946, effective May 6, 1947. On, to wit, May 5, 1947, Remington Rand, through one of its group, and in accordance with the terms of said binding declaration, submitted to Interhandel an offer to purchase said stock at the stipulated purchase price therefor against delivery of valid stock certificates in good delivery from evidencing the good and lawful transfer of all such shares to Remington Rand, and offered to work out all of the details and conditions involved in the consummation of the matter.

10. Under the law of Switzerland, if an oral offer to sell personal property is made it remains valid until the expiration of the time limit set forth by the offeror and may be accepted by the offeree at any time before the expiration of the time limit.

11. Under the law of Switzerland, when an offer is made to a corporate group the word "group" is understood to mean the parent corporation and its subsidiaries, and
2332 the offer may be accepted by the parent or any member of its official family. A subsidiary does not have to be in existence at the time an offer is made to the corporate group in order to accept the offer.

12. Interhandel contends that the "declaration of readiness" was nothing more than a moral obligation which they termed a "gentlemen's agreement". The evidence does not support the contention that the parties considered the "declaration of readiness" a moral obligation or "gentle-

men's agreement'' at the time it was made. The record does disclose, however, that the ''declaration of readiness'' was first referred to as a ''gentlemen's agreement'' by Interhandel in its Minutes of Janary, 1947.

13. On May 5, 1949, American Aniline & Chemical Company, assigned all of its right, title and interest under its agreement with Interhandel to Remington Rand, which is now ready, able and willing to pay the purchase price for the General Aniline & Film stock, if and when delivered to it.

14. Although Interhandel was ''provisionally blocked'' by the Swiss authorities at the time it made its offer to the Remington group, there was nothing in the law of Switzerland which prevented such a transaction. The Swiss blocking law prohibited only the actual transfer of property and not a contract to transfer *in futuro*.

REMINGTON RAND INC.
CUMMINGS, STANLEY, TRUITT & CROSS
By J. EDWARD BURROUGHS, JR.

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2334 Filed Apr. 26, 1950

Findings of Fact and Conclusions of Law

This case came on to be heard upon the complaint of intervention filed by Remington Rand, Inc., and the answers thereto of the plaintiff Societe Internationale Pour Participations Industrielles et Commerciales S. A., etc., hereinafter called ''Interhandel'', and the defendants J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and Georgia Neese Clark, Treasurer of the United States, and after trial of the issues raised thereby the Court enters the following findings of fact and conclusions of law.

2335 FINDINGS OF FACT

1. Remington Rand, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal office at New York, New York. Interhandel is a corporation organized under the Confederation of Switzerland with its principal office at Basle, Switzerland.

2. On February 16, 1942, April 24, 1942, and February 15, 1943, the predecessors of the present defendants J. Howard McGrath, Attorney General, and others, by certain vesting orders seized 455,624 shares of common A stock and 2,050,000 shares of the common B stock of General Airline and Film Corporation owned by Interhandel, and by reason of Executive Order No. 9788 effective October 15, 1946, the former defendants Tom Clark, as Attorney General of the United States, and others received said stock, and the present defendants J. Howard McGrath, as Attorney General of the United States, and others now hold the same.

3. On or about June 6, 1946, Interhandel, through its duly authorized representatives, made the following oral statement or offer to Remington Rand, Inc., through certain officials of the Union Bank of Zurich, Switzerland, who were acting for Remington Rand, Inc., in the matter: If Remington Rand, Inc., would endeavor to have the stock in General Aniline and Film Corporation described in
2336 paragraph 2 hereof released by the appropriate United States Government agencies and to have other conditions hereinafter referred to satisfied, and if the stock in question was actually returned to Interhandel by the appropriate United States Government agencies, and if the other conditions hereinafter referred to were satisfied before June 30, 1946, Interhandel would then be willing to accept an offer from Remington Rand, Inc., to purchase the stock for $25,000,000 converted into Swiss francs at the official rate or the equivalent value of gold ingots, to be then paid by Remington Rand, Inc., to Interhandel in Basle. The oral

statement or offer provided further that there would also be delivered to Interhandel, and that Interhandel would retain in addition to the sum of $25,000,000 mentioned above, 52,000 fully paid common shares of Interhandel and 28,000 half-paid common shares of Interhandel together with Interhandel's former bank accounts in the United States and dividends from General Aniline and Film for 1940 and 1941 payable to Interhandel, all of which shares, bank accounts, and dividends were then in possession of United States Government agencies, and that all discrimination in the United States against Interhandel, members of its Board of Directors, members of its administration, and preferred stockholders Industriebank A. G. Basle and Societe Auxiliare de Participations et de Depots S. A. Lausanne, members of their Boards of Directors, and all persons or companies who had been discriminated against because of their re-
2337 lationships to Interhandel, would be removed. The time within which the stock of General Aniline and Film Corporation might be returned to Interhandel and the other conditions of the offer satisfied was later extended by Interhandel to September 30, 1946. Thereafter the time was again extended by Interhandel, so that the offer was to run indefinitely, but, if Interhandel gave Remington Rand, Inc., notice of termination of the offer, it would be terminated 15 days thereafter unless the stock had actually been returned to Interhandel and all other conditions fulfilled before the end of said 15 days.

4. Remington Rand, Inc., through its representatives, submitted to Interhandel on January 9, 1947, a written form of option agreement, which provided that Interhandel should give to American Aniline and Chemical Company, a Nevada corporation which had been organized in October, 1946, as a subsidiary of Remington Rand, Inc., an option to purchase the stock in question held by Interhandel in General Aniline and Film Corporation for $25,000,000. The form of option as submitted by Remington Rand, Inc., provided that the optionee might give notice of its election to

purchase the stock at any time prior to April 30, 1947, and that in case the optionee exercised the option, delivery of the shares should be made by Interhandel against payment by the optionee at a time to be fixed by the optionee in such notice, "which time shall be not earlier than ten days nor later than thirty days after the date of the exercise of the option hereby granted". The form of option provided further that if the stock in General Aniline and Film Corporation and all dividends or other distributions thereon subsequent to February 16, 1942, had not been returned to Interhandel by the officials of the United States at the time fixed for delivery under the option (that is, not less than ten days nor more than thirty days after the exercise of the option), then both parties would be relieved from all obligations under the option. Interhandel declined to enter into this option agreement.

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5. Representatives of Remington Rand, Inc., went to Switzerland in March, 1947, for further conferences with representatives of Interhandel on the matter. These conferences culminated in two statements in writing of March 17, 1947, and March 20, 1947, signed by representatives of Interhandel and addressed to representatives of Remington Rand, Inc., whereby Interhandel again declined to enter into the option proposed, but stated that Interhandel was "prepared to extend the gentlemen agreement which exists between us definitely in such a way that it will be only cancellable again after 14 days from the date of April 15th, 1947". By "gentlemen agreement" was meant the oral statement or offer described in finding 3 hereof.

2339

6. April 21, 1947, Interhandel gave Remington Rand, Inc., written notice,

"... we deem it necessary to cancel the Gentlemen's Agreement existing between us, by giving the 15 days' notice, the agreement therefore being ended on May 6th."

May 1, 1947, Remington Rand, Inc., purported to assign to American Aniline and Chemical Company all its right, title, and interest in the "Gentlemen's Agreement"

"... without any representation or warranty or agreement on the part of [Remington Rand, Inc.,] in respect of the validity or enforceability of said agreement, or any part thereof, and also without recourse of any character or nature whatsoever ..."

Counsel for Remington Rand, Inc., formally admitted in the argument of the case that "the attempted assignment by Remington Rand to American Aniline and Chemical Company was a nullity, just as if it had never been made." May 5, 1947, American Aniline and Chemical Company cabled Interhandel,

"... The undersigned is a group represented by Union Bank of Switzerland and the assignee of Remington Rand, Inc. The undersigned does hereby make an offer to purchase from you all the shares of GAF of both classes owned by you on April 24, 1942, at the agreed purchase price therefor. Our election to purchase all of such shares as herein provided shall be deemed to be and shall constitute an acceptance by us of your agreement to accept an offer for the sale of the GAF shares aforesaid. We will pay you therefor the agreed purchase price against delivery to us within a reasonable time of valid stock certificates in good delivery form evidencing the good and lawful transfer of all such shares to us...."

2340 The assets of American Aniline and Chemical Company at that time were approximately $10,000. James H. Rand, President of Remington Rand, Inc., also cabled Interhandel May 5, 1947,

"... Remington Rand Inc. has assigned to American Aniline and Chemical Company Inc. all its right, title, and interest in and to the agreement between us for the purchase of all your company GAF shares which your Company recently notified us you were cancelling as of May 6."

When these cables were sent the stock in General Aniline and Film Corporation had not been returned to Interhandel, and the other conditions described in paragraph 3 hereof had not been performed, and said stock has never been re-

turned nor have the other conditions been performed. May 17, 1947, Interhandel cabled J. H. Rand, President of Remington Rand Inc.,

"... Reject the idea that any contract between ourselves and Remington or AACC or anyone else of your group exists as main preceding conditions of Gentlemen's Agreement are not at all fulfilled. . . . As to AACC we reject the idea of their being a participant in our discussions or a party to our Gentlemen's Agreement which by its very nature was strictly personal and not assignable."

May 5, 1949, American Aniline and Chemical Company, Inc., assigned to Remington Rand, Inc., all its right and interest in "an option agreement, partly written and partly oral" between Interhandel "and Remington Rand, Inc., in relation to the right and option to purchase from" Interhandel the General Aniline and Film Corporation stock and

"in and to all of its rights arising out of the exercise
2341 by it of the option agreement to purchase the aforesaid shares of stock."

7. Under Swiss law no consideration is necessary to support a contract, and an offer made for a certain period of time is binding on the offeror until that period has expired, unless this would be contrary to the expressed intention of the offeror. The expression "gentlemen's agreement" in Swiss business practice means an agreement which the parties do not intend to be enforceable at law. The use of the term "gentlemen's agreement" as applied to the offer described in paragraph 3 hereof showed an intention of the offeror that the offer was not to be enforceable at law, and no enforceable rights could result under Swiss law from the acceptance of such an offer.

8. Under Swiss law an offer cannot be assigned.

9. During the period from October 30, 1945, to January 8, 1948, Interhandel was blocked by order of the Swiss Compensation Office pursuant to Swiss law. During that period it was therefore illegal under Swiss law for Interhandel to transfer or to contract to transfer the stock of General

Aniline and Film Corporation owned by it without the consent of the Swiss Compensation Office, and no such consent was obtained, and any contract to that effect would have been invalid and unenforceable under Swiss law.

2342 10. No license or authorization pursuant to the U. S Trading With The Enemy Act has ever been issued to Remington Rand, Inc., by any official of the United States authorizing Remington Rand, Inc., to acquire any rights in the equitable estate or interest of Interhandel in the stock of General Aniline and Film Corporation.

DAVID A. PINE
Judge

April 17, 1950

2343 CONCLUSIONS OF LAW

1. The offer of Interhandel expired May 6, 1947, by reason of the notice given April 21, 1947, and by the fact that the General Aniline and Film stock was not returned to Interhandel by the United States authorities, and the other conditions of the offer were not fulfilled, within fifteen days of such notice.

2. The offer made by Interhandel was addressed to Remington Rand, Inc., and Remington Rand, Inc., did not accept the offer before its expiration.

3. The purported acceptance of the offer by American Aniline and Chemical Company was ineffectual (a) because the conditions precedent had not been fulfilled and (b) because the offer was not made to American Aniline and Chemical Company, and the purported assignment of Remington Rand, Inc., to American Aniline and Chemical Company was of no effect.

4. The offer and purported acceptance, being unenforceable under the law of Switzerland where the offer was made, will not be enforced in this court.

5. The offer and purported acceptance were null and void, illegal and unenforceable in the Courts of the United States:

2344 because no license or authorization, pursuant to the United States Trading With The Enemy Act, has ever been issued to permit Remington Rand, Inc., to acquire any right in the equitable interest or estate of Interhandel in the General Aniline and Film shares.

6. The complaint of intervention filed by Remington Rand, Inc., should be dismissed.

DAVID A. PINE
Judge

April 17, 1950

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2345 Filed Apr. 26, 1950

Judgment

This cause came on to be heard on the complaint of intervention of Remington Rand, Inc., and the answers thereto of the plaintiff Societe Internationale Pour Participations Industrielles et Commerciales S. A., etc., and the defendants J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and Georgia Neese Clark, Treasurer of the United States, and was tried and argued and submitted on the issues raised thereby, and thereafter by leave of Court an amended complaint of intervention by Remington Rand, Inc., was filed and
2346 answers were filed thereto by the plaintiff and by the defendants, and the Court having filed its findings of fact and conclusions of law relating thereto, it is by the Court this 26th day of April, 1950,

ADJUDGED, ORDERED, AND DECREED That the complaint of intervention filed by Remington Rand, Inc., in the above-entitled cause, as amended, be, and the same is hereby, dismissed, and that judgment be, and the same is hereby, entered in favor of the plaintiff and the defendants on the issues raised thereby, and that Remington Rand, Inc., pay

the costs of this intervention and the proceedings thereunder as taxed by the Clerk.

DAVID A. PINE
Judge

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EXCERPTS FROM TESTIMONY AND PROCEEDINGS

126 **James H. Rand** was called as a witness for and on behalf of Remington Rand, Inc., the Intervener, and, being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Burroughs:

Q. State your full name, please. A. James H. Rand.

Q. What is your address, Mr. Rand? A. Darien, Connecticut.

Q. What is your connection with the firm of Remington Rand? A. I am Chairman of the Board and President.

Q. How long have you been connected with the firm of Remington Rand? A. About 22 years.

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148 Q. Will you describe for us Mr. Eugene Geary? Tell us who he is, and what, if any, connection he had with Remington Rand in 1946 and 1947? A. Mr. Geary was counsel for Remington Rand in 1946 and 1947.

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149 Q. Are you familiar with the structure of the American Aniline and Chemical Company? A. I am.

Q. Could you tell us something about that corporation? A. Well, the structure was made sufficiently large in authorized capital so that it would replace the General Aniline and Film. I believe it had some thirty or forty million dollars of authorized preferred stock and some three million shares of common stock.

Q. When was the corporation organized, and under what circumstances? A. According to my recollection, it was some time in 1945.

150 Mr. Gordon: Wouldn't the certificate of incorporation be the best evidence? You put it in evidence, Mr. Burroughs. Just refer to the date.

Q. (By Mr. Burroughs) While I am looking for the date, will you tell us—

Mr. Gordon: What did you say in answer to that—1945?

Mr. Burroughs: He said his recollection was that it was 1945.

(Thereupon, the previous answer of the witness was read by the Reporter.)

Mr. Gordon: Let us clear that up.

Mr. Burroughs: It was acknowledged, according to the exhibit, on the second day of October, 1946.

By Mr. Burroughs:

Q. Does that serve to refresh your recollection? A. It does.

Q. Was it organized under the name of the American Aniline and Chemical originally? A. No. It was organized under a different name, I believe Amino Corporation.

Q. Did there come a time when it was subsequently changed to American Aniline and Chemical? A. That is correct.

Mr. Gordon: What was the date of that?

151 Mr. Burroughs: That was the 19th day of December, 1946, roughly two months after.

Mr. Gordon: That was when its name was first American Aniline and Chemical, is that right?

Mr. Burroughs: That is correct, yes.

By Mr. Burroughs:

Q. Who were the stockholders of the American Aniline and Chemical, or Amino, when it was organized? A. Certain individuals who were acting as nominees for Remington Rand.

Q. Did Remington Rand cause American Aniline and Chemical or Amino to be organized? A. Officers of the company did.

Q. And these three individuals, you have said were acting as nominees for Remington Rand? A. I did.

Q. Why did you cause American Aniline and Chemical or Amino to be organized?

Mr. Gordon: Objection.

The Court: Sustained.

Q. (By Mr. Burroughs) Did the organization of American Aniline have any relation to the General Aniline and Film transaction?

Mr. Gordon: I object.

The Court: I did not hear the original question.

152 (The question referred to was read by the Reporter.)

The Court: Overruled. You may answer.

The Witness: It had this relationship, that the capital was—the authorized capital was made sufficient to encompass the authorized or the outstanding shares of the General Aniline and Film Corporation at some future time, and to simplify the capital structure and eliminate the two classes of common stock and have one orthodox class of common stock.

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159 Q. And you think your meeting with Mr. Germann took place a few days before May 6th? A. That is correct.

Q. Where did that meeting take place, and who was present? A. That meeting took place at Norwalk, our office at Norwalk, Connecticut.

Q. And who was present? A. Mr. Germann; Mr. Walter—Dr. Walter Schiess, and myself.

Q. Now, what was the nature of the conversation had between the three of you at that time? A. We discussed the fact that we had received the notice, which was discon-

certing to Remington Rand, giving us the 14 days' notice, which was about to run out.

Mr. Germann explained that they were very sorry, but that it was necessary for them to do it in view of their situation and their understanding of the attitude of the United States Government, and that they did it only because they thought it would be very helpful to them in making a settlement with the United States Government.

And I told Mr. Germann that I thought that was
160 something that we were expected to do, but it was very nice if they were undertaking to do it themselves, and if there was anything we could do to cooperate with them, we would be glad to do it.

He said "There is one thing you can do, and that is to give us a release of any claim against our company in connection with our agreement."

And I said we wouldn't be willing to do that. "But," he said, "I need that in order to carry through negotiations with a syndicate."

I said "Do you mean to tell me that you are negotiating with a syndicate?" He said "Yes, sir, and I want to invite you to become a participant in the syndicate."

I said "Who are the syndicate?" He said "I cannot tell you until you give me a signed release from Remington Rand and from the officers, signed by the officers of the company, in proper form."

I said "Well, you are in my opinion initiating some negotiations and inviting us to participate in those negotiations. I consider that a breach of contract," I said to him, "and we will not join a syndicate, and we will not give you the release."

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170 Q. Mr. Rand, at the time that the cable of the
171 American Aniline and Chemical Company was sent to Interhandel, did the American Aniline and Chemical Company have sufficient money with which to pay Inter-

handel 25 million dollars? A. I know they did not have the money at the moment.

Q. Was there any agreement between Remington Rand and American Aniline and Chemical Company, either formal, or informal, with regard to the financing of American Aniline and Chemical? A. The board of directors of Remington Rand had discussed this thing informally, and had been unanimous that they should go through with backing up the American Aniline and Chemical in this transaction.

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227 Redirect examination

By Mr. Burroughs:

Q. Mr. Rand, you were asked this morning, when being questioned about the letter of June 14, 1946, whether, prior to the receipt of that letter, anyone was authorized to enter into an option agreement for Remington Rand. Now, do you understand my question? A. Yes.

Q. It is a fact, however, that you have testified that you authorized the Union Bank to explore the possibilities of the purchase of the G.A.F. shares from Interhandel prior to June 14th, 1946, isn't it? A. That is correct.

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234 Q. What was the oral arrangement between Remington Rand and American Aniline and Chemical with respect to financing the American Aniline and Chemical in the event they purchased the shares of the G.A.F.? A. The American Aniline and Chemical was a subsidiary of Remington Rand, and we told them as a subsidiary that when they had occasion to use money, Remington Rand would supply it, which is customary in our business with all of our subsidiaries.

We do not authorize transfers until we have to make a transfer, until something is needed to be transferred,—cash or securities or other things.

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174 Cross examination

By Mr. Gordon:

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182 Q. Prior to this letter from the Treasury Department of February 14, 1946—I beg pardon, June 14, 1946—marked "RR Exhibit 1," which you and I have been looking at—prior to that and prior to the authorization to negotiate, that Remington Rand got from the Treasury Department, had you authorized anyone to negotiate on behalf of Remington Rand for the acquisition of any rights from Chemie? A. No, we had not.

Q. You had not? A. I had not.

Q. Had anyone done so on behalf of Remington Rand, to your knowledge? A. Not to my knowledge.

Q. Was anyone authorized to give any such authorization without your knowledge? A. Not to my knowledge, no, sir.

Q. Then, if there had been any negotiation on behalf of Remington Rand prior to June 14, 1946, it was not authorized by Remington Rand? Is that right? A. That
183 is correct.

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184 Q. (By Mr. Gordon) Well, Mr. Rand, in the face of that letter, did Remington Rand, under any authority from you, acquire any rights in Chemie stock or rights from Chemie in General Aniline stock, or any option with respect thereto, prior to the subsequent letter of December 23, 1946? A. Not to my knowledge.

Q. Did anyone, to your knowledge, have authority on behalf of Remington Rand to acquire an option of that nature during that period prior to December 23, 1946? A. Well, I considered the license a right to prepare the way for an option.

Q. That is, a license to negotiate? A. Correct.

Q. But Remington Rand had no license to enter into any option with Chemie? A. No license to quote.

185 Q. Well now, let us see what we mean by that. I think I asked you whether, on behalf of Remington Rand, in the face of the statement of this letter of June 14th, you authorized any representative of Remington Rand to enter into any option with Chemie prior to December 23, 1946. I think you answered that you did not. Is that right? A. That is right.

Q. Do you want to modify that answer? A. No, sir.

Mr. Burroughs: Speak up, Mr. Rand. Don't shake your head.

The Witness: I said I did not.

Q. (By Mr. Gordon) Then, as far as you know, no one during the period from June 14, 1946, to December 23, 1946, had authority on behalf of Remington Rand to enter into any option contract with Chemie or Interhandel? Is that right? A. I can only speak for Remington Rand.

Q. For Remington Rand, no one was authorized? Is that right? A. That is right.

Q. And as far as you know, nothing of the sort was done? Is that right? A. I wasn't there. I can't speak.

Q. Well, is it your answer that perhaps somebody
186 entered into such an option without authority from Remington Rand? A. No.

Q. You have no knowledge? A. No knowledge.

Q. You have no knowledge or suggestion that anything of the sort was done, have you? A. No.

Q. Then, down to December 23, 1946, your testimony is that, as far as you know, there was no option or other contract relating to the acquisition of these rights between Remington Rand and Interhandel? Is that right?

Mr. Burroughs: He hasn't said that. He said that to his knowledge no one was authorized to accept an offer for an option.

The Court: Objection overruled. You may answer. A. Will you repeat the question, please?

(The reporter read the question as follows:

"Q. Then, down to December 23, 1946, your testimony is that, as far as you know, there was no option or other contract relating to the acquisition of these rights between Remington Rand and Interhandel? Is that right?") A. No option was concluded during that period.

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206 Q. Now, Mr. Rand, is this a correct statement: that after Remington Rand received this letter of December 23, you and the other responsible persons in Remington Rand considered that there was no longer any impediment to your acquiring from Interhandel an option to purchase the General Aniline & Film shares, if you could get such an option? Is that right? A. That was my information. I was so informed by counsel.

Q. So that, after that time Mr. Nemzek was reinforced in Europe—in Switzerland, let me say—by Messrs. Shorten and Garey? Is that correct? A. I might say replaced.

Q. Well Mr. Nemzek did not come home until April, after all the negotiations were over, did he? A. He was not in charge any more.

207 Q. He was not in charge any more? Mr. Nemzek had been in charge up to that time, but after Mr. Shorten and Mr. Garey went over, who was in charge, Shorten or Garey? A. Mr. Shorten.

Q. Mr. Shorten was in charge, and Mr. Garey was acting as counsel? Is that right? A. That is correct.

Q. So that anything that was done by Nemzek on behalf of Remington Rand would have been done by Mr. Shorten, with the advice of Mr. Garey? Is that correct? A. That is correct.

Q. And Mr. Nemzek was there, and to the extent that he may have been with them, he was under the direction of Mr. Shorten? Is that correct? A. I was not there, but that is my understanding.

Q. Those were the instructions anyway? A. That Mr. Shorten was to be in charge.

Q. Mr. Rand, in your deposition that we took, on page 43 I asked you if you could give me an idea of what the assets and liabilities of American Aniline & Chemical were on April 22, 1947, and you said you would say it was less than $10,000. Do you remember saying that? A. I do.

Q. That is correct, isn't it? A. That is correct.

Q. And I said: "You mean it had less than $10,000
208 of assets?" and you said that was right. That is your answer, is it not? A. I can't remember whether it was my whole answer or not.

Q. You meant to say it had the backing of Remington Rand also? A. That is part of it, yes, had the backing of Remington Rand.

Q. That is, the assets of that corporation, American Aniline & Film at that time, when it purported to accept—purported to exercise the option—were $10,000, but you considered that it had the backing of Remington Rand? A. That is correct, yes.

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235 Q. (By Mr. Burroughs) What did you say to either one of them? A. Mr. Wilson —

Q. Or to Mr. Whiteford, about the option. A. I said we needed an option in proper form, with proper term,
236 duration, "and we should have power of attorney jointly with you, if you please, but we should have power of attorney, I am advised by counsel. And we ask that you urge your client, the Chemie Company, to enter into an option. We submit to you a copy of the tentative draft."

Q. And what was the response of either Mr. Wilson or Mr. Whiteford to that request? A. I believe it was this, that "If we recommend an option, we have got to recommend a marriage between the two companies; the duration isn't so important, it could go on and on until it was consummated. The first thing we want to find out is whether we should have a marriage between the two companies."

And I believe that no recommendations of the kind resulted to his client—no recommendations were made to the client.

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250 Mr. Burroughs: Now, if Your Honor please, for the sake of continuity of events, and in the absence of Mr. Richner's deposition, at this time I want to call Doctor Sturzenegger, who is an adverse witness, and ask Your Honor to accord me the privilege of interrogating an adverse witness, at this time.

THEREUPON—

251 **Doctor Hans Sturzenegger** was called as an adverse witness by the Intervener, Remington Rand, Inc. and, being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Burroughs:

Q. Will you give the Reporter your full name, Doctor? A. Hans Sturzenegger. Shall I spell it?

The Court: Yes.

The Witness: S-t-u-r-z-e-n-e-g-g-e-r, — Hans.

Q. (By Mr. Burroughs) Where do you live? A. In Basle, Switzerland.

Q. How old are you, Doctor? A. Pardon me?

Q. How old are you? A. I am 48.

Q. What is your occupation? A. I am a banker, head of the private banking firm, H. Sturzenegger & Company, Basle.

Q. Will you tell us something of your educational background? A. Well, after having gone through the ordinary schools, I studied law, and finished those studies by taking the Doctor's degree. Then I went through banking practice,

252 as we call it in Switzerland, traveled a bit, and looked for a position. I then joined the firm of Ed. Greutert and Company,—private banking house.

The Court: Say that slowly, will you? I did not get it.

The Witness: Ed. Greutert and Company, Basle, Switzerland.

By Mr. Burroughs:

Q. And was that the predecessor in name to H. Sturzenegger and Company you have just told us about, of which you are the head? A. That is correct, yes.

Q. Doctor, are you connected with Interhandel, or were you connected with Interhandel in 1946 and 1947, and are you still so connected? A. I was, and I am still.

Q. And what is your official title with Interhandel? A. I am a member of the Board, one of the directors of Interhandel.

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256 Q. Now, would you tell us who the officers and directors of the Interhandel are, or were in 1946 and 1947? A. Well, they are now—

Q. No, let us go back, if you will, please, to 1946. A. 1946 and '47?

Q. Yes. A. Well, Dr. Iselin, President; Mr. August Germann, and—

Q. What is he? A. A member of the Board.

Q. Director? A. Director, yes. Then Mr. Thormann. He died, if I am not mistaken, toward the end of 1946.

Q. He was a director? A. He was a director, yes.

257 Then Mr. Rudolph, myself, then Mr. von Tacharner.

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266 Q. Was there ever a time when I. G. Chemie or Interhandel were on a black list? A. Yes, sir.

Q. And when was it and by what government was it black listed? A. I do not recall the date. I believe that the black listing by the American authorities of Interhandel took place shortly after the United States entered the war, and it was shortly before that date that the Interhandel Com-

267 pany had been on the English black list and the French black list too.

Q. On the English and French black lists prior to the time the United States entered the war? A. Yes.

Q. And then were they placed on the United States black list after the United States entered the war? A. Yes, I don't recall, as I say, the exact date, but I think shortly after the outbreak of the war, after entering the war.

Q. Do you know whether Interhandel was removed from the United States black list at any time? A. Yes.

Q. Can you tell us, roughly, when that was? A. I believe—

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268 Q. I ask you if you could tell us, roughly when it was? A. To my recollection it was November, 1946. Anyhow, it was toward the end of 1946.

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269 "Q. Did there come a time in the first half of 1946 that you had a conversation or a conference with either Messrs. Richner or Wehrli, or both?")

Mr. Burroughs: I had not finished my question when the interruption took place.

By Mr. Burroughs:

Q. Concerning the possible sale of the GAF participation owned by Interhandel—

Mr. Gordon: I object to that unless the date is fixed more accurately.

The Court: It may be answered "yes" or "no."

A. Yes, I remember.

Q. (By Mr. Burroughs) Can you tell us approximately when it was you first conferred with either of these gentlemen? A. Well, to the best of my recollection it was in the early spring of the year 1946.

Q. If you can, would you be good enough to tell us who was present on the first or at the first conference?

Mr. Gordon: I object to that.

The Court: On what ground?

Mr. Gordon: I object on the ground that it can not possibly be material, because if there was a conference
270 he should have been authorized to negotiate on behalf of Remington Rand prior to June 14, 1946.

The Court: Well, this may be preliminary to negotiations. It may be a link in the chain. I overrule the objection.

A. May I ask for the question?

By Mr. Burroughs:

Q. The question was: who was present at the first conference, if you can recall? A. Yes. I am not sure I can recall, but I recall there were several preliminary discussions, and I think it began with Mr. Richner in Basle. That is my recollection about it. It may be that he was accompanied by Mr. Wehrli.

Q. Now then, Doctor, following the preliminary conferences, did you confer again on June 6, 1946, with Mr. Richner? A. I remember there was a meeting, and I was refreshed that after having seen the document it took place on this date.

Q. Will you tell us where this conference took place and who was present? A. Well, if I am not mistaken, this conference took place in Basle, in the office room of the Interhandel.

Q. Who was present? A. I believe there were present Mr. Richner and Mr. Wehrli from the Union Bank,
271 and on the Interhandel side I believe Dr. Iselin, Mr. Walter Germann and myself, maybe also Mr. Augustus Germann. I am not sure.

Q. What took place on that occasion, Doctor? A. On this occasion, which followed many preliminary discussions, I think that the representative of Remington Rand, Mr. Richner, declared their attitude in the whole matter.

Q. Now, will you tell us what declarations were made to Mr. Richner regarding the attitude of Interhandel? A. The essence of it—I can not recall the phrases in which the exchanges were made, but the essence was that Inter-

handel would be prepared or would be ready to accept a certain offer made by interested American parties for the sale of the General Aniline & Firm Corporation shares, provided such an offer would be made within a certain discussed time limit, and that before the end of the time limit, the essential conditions, or better, the prerequisites which were of the utmost importance to Interhandel, were fully filled.

Q. Now, will you tell us what they were? A. The first prerequisites, which I think were always mentioned, were that the property of Interhandel in the United States must be freed and turned back after being freed, to be at the free disposal of Interhandel.

272 Second, that all discrimination under which the Interhandel Company and the big stockholders of the company, and the members of the Board of the Company and the managers, were suffering, and that all and every discrimination of any sort as to any person or company, discrimination because of their relationship with Interhandel, must be removed, and when these three requisites, whereby the property of Interhandel does not mean only the shares, but the accounts also, the bank accounts and the dividends of some years, and the Interhandel stock vested by the Alien Property Custodian, and all the prerequisites were fulfilled before the time agreed upon and before the end of the time limit—if before the end of the time limit the American interested parties, whereby we can assure that the corporation would make a firm, binding offer to Interhandel at the agreed upon price, then that part of the understanding Interhandel would accept of such an offer, and that means would pass over to the Remington Rand Corporation participation in the General Aniline & Film Corporation at the price discussed before at $25,000,000, and it was the further understanding that the price in such a case had to be paid in Switzerland in gold or in cash. Maybe there were some other minor points which I do not recollect. They are small, but I think that is the substance. And as I am not sure

whether I was able to make it clear with my somewhat primary English, I would like to emphasize once
273 more all this undertook with Interhandel representatives that only after the fulfillment of the mentioned prerequisites, would the offer of Remington Rand Company be accepted. That was a condition precedent.

Q. Did I understand your last statement to be that it was only after the fulfillment of the conditions by Remington Rand that the offer would be accepted? A. Yes. I mean by this offer in the sense of our understanding, it would only be made by Remington Rand after the fulfillment of those aforementioned prerequisites. Only then would Interhandel have accepted such a binding offer to make the sale.

Q. This declaration which you told us about on June 6th had been the subject matter of discussions in your Board of Directors prior to June 6, had it not? A. I believe so, yes.

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283 Q. (By Mr. Burroughs) Did you have a memorandum of the conditions as outlined by your Board before you when you made your statement to Mr. Richner? A. Not to my recollection.

284 Q. It was all from memory? A. Well, maybe I had just a note on paper, but I remember,—that is the best of my recollection, that I didn't have an elaborate document.

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287 Q. Now, I think you told us yesterday that the terms of the agreement were that you had to have all of your property back, and then if Remington Rand was willing to pay you 25 million dollars for the property, you would then accept their offer and turn over the property, but prior to that time you had to have all your property back in your hands? A. And the other discriminations removed, and these other matters mentioned before.

Q. In other words, there had to be a complete undoing of the blocking and the vesting, and a return of all of your

property, so that you were completely free; then if Remington Rand produced 25 million dollars, you would then turn over the G.A.F. stock? A. No. I would say more exactly, if then after having fulfilled all these prerequisites, if then Remington Rand would have made a firm licensed offer on the agreed upon figures,—I mean the 25 million dollars,—then we would have accepted such an offer, and, of course, thereupon sold our G.A.F. shares to Remington Rand.

Q. Well, now, let us get at it another way. Suppose, prior to the expiry date, all of these conditions which you
288 have mentioned had been fulfilled, and all of your property had been returned to you, would you then have been willing to turn over the G.A.F. shares to Remington Rand had they presented you with 25 million dollars? Or would you have had a waiting period after which you accepted the offer and then set some future time you would have turned the shares over to Remington Rand? A. That is not right, because, as I stated, it is the best of my recollection if after fulfillment of all these conditions precedent, Remington Rand had made a licensed, firm offer on the discussed basis, then it was our understanding we would have accepted this offer and turned over, of course, then, carrying through the sale of our participation in the G.A.F. shares.

Q. Did you contemplate a waiting period between the acceptance of the Remington Rand offer and the delivery of the G. A. F. shares? A. No. I did not contemplate that. I think that just for practical reasons,—I mean the payment would have had to be made according to our understanding in Switzerland. If that had been carried through, then the sale would have been an immediate sale.

Q. In other words, it would have been a simultaneous transaction, would it not? A. Yes.

289 Q. Now, Doctor, why did you want the guarantee of a Swiss bank that Remington Rand could fulfill its obligation, if after your conditions had been complied with you were prepared to turn over the property immediately upon payment of the money? A. Well, that is my rec-

ollection. We thought,—at this moment, I think, we were thinking of an absolute assurance that the price was really at our disposal in Switzerland.

Q. Well, now, isn't it a fact that you testified previously that the June 18th date was fixed because you wanted some indication from Remington Rand that the price of 25 million dollars and the other conditions were satisfactory to them? A. I stated the—to the best of my recollection this intermediary date must have had such a meaning, because—well, if we hadn't had such an indicating at such time, then we would have been convinced that Remington Rand didn't like these price figures discussed.

Q. Now, then, isn't it the fact that you fixed the June 18th date as a sort of a test date by which time Remington Rand could signify its agreement as to the price and the conditions, and that thereafter you gave them until June 30th to make you a binding offer? A. That is right. Within the period up to June 30th we felt bound to our declara-
290 tion of readiness, which means that if before the end of this date of June 30th all these prerequisites had been fulfilled and the licensed, firm offer to Remington Rand made to us—I mean all that before the end of this period of June 30th—then we would have accepted this offer and would have sold the property in question.

Q. But you didn't mean that you had to have all of these conditions fulfilled by June 30th, did you?

Mr. Gordon: Mr. Burroughs, what meeting are you referring to, these minutes of July 25th that you have been talking about?

Mr. Burroughs: I am not referring to any meeting now.

Mr. Gordon: You jumped into an earlier date.

Mr. Burroughs: I think that is my privilege.

Mr. Gordon: All right.

The Witness: What is the pending question?

(The pending question was read by the Reporter.)

The Witness: Yes, we meant it. Otherwise, we didn't feel bound according to our understanding, but before the ex-

piration of this time limit, I remember that an extension of time was agreed upon.

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291 Q. And you expected that Remington Rand or some other of its group were going to have you removed from the blacklist, were going to have all of the discriminations removed, were going to have the Alien Property Custodian return all of your property to you? A. Yes.

Q. Is that right? A. Yes.

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294 Q. If I understand your testimony correctly, it was your intention, or that of Interhandel, that Remington Rand should use its influence and efforts to have your people and your company removed from the proclaimed blacklist, all discriminations removed, and recover all of your property, both the G.A.F. stock and the Interhandel stock, and the two million dollars in cash, on solely and simply a promise, that if as the result of their efforts those things were accomplished, you would accept an offer? A. That is right.

Q. From them to pay 25 million dollars? A. Yes, that is right.

Q. And you expected them to accomplish these results in the period between June 6th, 1946 and June 30th, 1946.

Is that correct? A. Well, the efforts of Remington
295 Rand, to my understanding, had began already before that time, because I remember quite well many discussions we had before with Mr. Richner, and we always understood Mr. Richner represented Remington Rand.

Q. You have told us all that. My question is, was it your understanding of your demand that Remington Rand should accomplish all of these things you have enumerated, between June 6th, 1946 and June 30th, 1946? A. Well, we hoped so.

Q. I know you hoped so, but did you expect them to do it, and if it wasn't done, did you expect to cancel them? A. No. It wasn't cancelled, I stated before.

Q. No. I am talking about, now, on June 6th. What did you intend should take place? A. Then we had this time limit in mind, had it fixed. That is right.

Q. And you told them that if they did not accomplish all of these results between June 6th and June 30th, that you were no longer bound. Is that correct? A. That is correct.

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302 Q. Now, Doctor, as I understand it, you constantly refused to give Remington Rand an option in writing. Is that correct? A. Not only an option in writing, also an option.

Q. You wouldn't give them any option of any kind? A. That is right.

Q. But at the same time, had they fulfilled these conditions that you have told us about, and produced the 25 million dollars, you would have turned over the G.A.F. shares? Is that correct? A. Yes, no doubt—not the slightest doubt.

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304 Q. In connection with that last statement, this offer which was submitted to you, and which we were just talking about, in written form, that mentioned the American Aniline and Chemical Company, didn't it? A. That is right, this draft that was submitted to us early in the year 1947.

Q. And do these minutes contain any rejection of the option because it was submitted by American Aniline and Chemical? A. I should say not on these (counts), but
305 it is, I believe, clearly seen from the minutes that on several occasions it was decided not to fulfill the wishes of Remington Rand and not to enter into any option agreement. Therefore, there was no need at all to mention American Aniline and Chemical Company.

Q. Now, you refused to give an option, but you had an agreement? A. Yes, sir.

Q. The terms of which you have outlined? A. Yes, sir.

Q. Did you refuse to put the terms of that agreement in writing? A. Yes.

Q. Why? A. Well, it was just a matter of principle. We wanted from the beginning, and made it clear, I think, to Mr. Richner, to have only an oral agreement, but this oral agreement was made on June 6th in the presence, not only of Mr. Walter Germann and myself, just to emphasize the importance and the seriousness of this oral agreement,—if I am not wrong, Mr. Iselin, maybe even Mr. August Germann were present, too, and it was meant absolutely seriously, but we didn't want to put it in written form.

Q. You felt yourself bound by it? A. Yes, morally
306 bound.

Q. Morally bound? A. Yes.

Q. But you did not want to be legally bound, is that the idea? A. Yes. That is right.

Q. Why didn't you want to be legally bound? A. Well, there were different reasons,—just that we did not want at that time to enter in a unilateral, binding agreement. We did not want to be tied up, or, as Mr. Garey put it later, just to marry Remington Rand without Remington Rand making themselves a legal agreement, and that they didn't do. That was one of the reasons.

Mr. Gordon: That was one of the reasons?

The Witness: That was one of the reasons.

Mr. Gordon: He has not finished.

The Witness: Yes. I should like to add, too, that we didn't like the idea that the figures and terms we had discussed and included in our oral agreement,—we didn't like the idea that these figures could possibly circulate around in the world in such a way as to prejudice our situation. We didn't like that this figure of this 25 million dollars we had come to after many discussions, appeared or was known to third parties and so could possibly handicap our position if the Remington Rand would fail. And there was another
reason I think we took in consideration, too. That
307 was our somewhat delicate position in Switzerland.

Q. Will you explain that, please? A. I mentioned it in my previous deposition. We wanted to refer to the fact

that Interhandel was at that time under kind of a provisional blocking from the Swiss authorities.

Q. In June of 1946? A. During the whole period. It began at the end of 1945 and was the case during all of the period referred to now.

Q. Any other reasons? A. Well, I think I have—

Q. Covered them all? A. Covered at least the reasons that now come to my mind.

Q. Now, you had every intention of honoring your agreement with Remington Rand, didn't you? A. No doubt. There was at no moment the slightest doubt that we would have done it.

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308 Q. And it is still your position that had Remington Rand done the things that you expected of them, you would have gone through with your agreement? A. Of course. Of course.

Q. And it was just as binding upon you gentlemen of honor as if you had put it in writing? A. No doubt. It was, as we call it, a gentlemen's agreement. And that means in Switzerland, at least in our conception, an understanding between gentlemen, whereby the parties feel absolutely bound morally, not in a legally enforceable sense.

Q. Now, your declaration to Mr. Richner was extended from time to time, was it not? A. That is correct.

Q. And it was finally extended until April 15, 1947, cancellable on 14 days' notice? A. That is correct.

Q. Doctor, would you now examine our Remington Rand Exhibit No. 25, and I will read from an English translation of it. That, I might indicate for the record, is
309 what purports to be a German memorandum made by Messrs. Richner and Wehrli of the June 6th declaration.

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312 "The representatives of Interhandel made the declaration binding for the corporation that Interhandel would be ready, or prepared, to accept an offer for the sale of its participation in the General Aniline and Film

Corporation, U.S.A., which offer would be submitted
313 to it" (meaning Interhandel) "by the S. B. G." I guess it is the abbreviation of Schweitzer Bank Gesellschaft. That means the Union Bank of Switzerland, or —well, it means respectively group(s) represented by the Union Bank, and to the effect that, that is the sense, that Interhandel would be prepared to alienate—

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A. Alienate, or sell. It is the word for sell "their participation." "if the offer contains the binding obligation to pay to Interhandel as purchase price $25,000,000 for the 52,000 fully paid shares of Interhandel, 28,000 half paid shares of Interhandel."

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A. Yes. "Further, an amount of approximately $2,000,000 resulting from previous bank accounts and dividend amounts shall be at the free disposition" or disposal "of Interhandel."

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314 A. "The acceptance of the offer will be made under the conditions:

"(a) that $25,000,000 are in free Swiss francs, local Basle, or put to the disposal of Interhandel in a corresponding gold deposit with the Swiss National Bank in Switzerland. The Interhandel would also agree that those deposits would be blocked for a certain time with the Swiss National Bank."

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A. "(b) that the above-mentioned amount of approximately $2,000,000 will be released completely in the United States in the attempt of complete"—the meaning is in this sense, that this amount is handled completely in accordance with corresponding property of Swiss firms and persons who have never been on the black list. The meaning is the correct translation, not verbally.

"(c) that every discrimination which was created by posting the Interhandel on the American black list will be

removed, and not only for the Interhandel but also
315 for the members of the Board of the Corporation, big stockholders and members of the Board of such big stockholders, those persons and firms that were put on the black list because of their relations with Interhandel. The removal of any discrimination"—well, I would say the meaning, but even the general sentence is not a correct sentence.

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A. "The removal of every discrimination, and especially the release of the blocked properties and firms in the United States, in the sense of accomplishing coordination with corresponding property of Swiss firms and persons who have never been on the black list."

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A. "(d) that the above-mentioned 80,000 shares of Interhandel will be put at the free disposal of the company."

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A. "If the above-mentioned conditions are fulfilled, then Interhandel will seize"—I mean to seize the property. That is what it is in German.

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316 A. Well, the accepted word would be seize, but "transfer" might be all right—"Interhandel would seize or transfer—would transfer its participation in the General Aniline Film Corporation, all transfers whatsoever of property in the United States to the purchaser. The binding of the above declaration"—in German it is "is limited as below."

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A. Yes, that is all right, "subject to the following time limit.

"Up to June 18, 1946, 9 o'clock before noon, the parties interested in the purchase have to declare that he is willing to acquire the shares, participation of Interhandel in GAF, at the condition here circumscribed, and that he will endeav-

or to get in this sense the necessary consent of competent American Government authorities.

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317 A. "After receipt of the declaration, Interhandel holds itself thereon up to the 30th of June, 1946."

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A. Yes, 30th of June, 1946—"bound to its solemn declaration made on June 6, 1946." Then in brackets, "(concerning its readiness to accept the offer, purchasing offer, for the GAF, and under the conditions and"—

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A. At a certain price, yes. Then the bracket is closed—"Within these several time limits, the parties interested in the purchase have to submit a binding offer for the transaction on the aforementioned phases of payments to Interhandel. This is based on the license necessary hereto.

"If this binding declaration will not be made within the contemplated time limit, Interhandel will not consider itself any longer bound with respect to—bound to this declaration of June 6, 1942."

I think that is all of it.

Q. Now, Doctor, do the terms of the declaration set forth in this instrument from which you have just read, and which is designated as RR Exhibit No. 25 for identification,

318 correctly list the conditions of the declaration as you and your colleagues gave them to Mr. Richner and Mr. Wehrli on June 6, 1946? A. Well, in order to make an exact statement I would have to have more time to study it. As to the features, and I think as a whole, roughly speaking, it is the correct statement, although I am sure we did not put it just this way, and especially one thing, it seems to me, that is not emphasized enough to Mr. Richner, that all the conditions which are enumerated here must be fulfilled before the offer is made and can be accepted. It is contained here, but I should say I would like more emphasis than appears from the one side in the memo which I have seen for

the first time here just before my deposition here in New York.

Then it is stated right in the beginning of this memorandum that the representatives make the declaration binding for the company, and it is in contrast to your English translation that there is no mention of any legal binding in the text.

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322 Q. When did you first start calling this declaration a "gentlemen's agreement"? A. Well, I do not recollect the date, but I think early, maybe from the beginning.

Q. From the beginning? A. Well, I think we among ourselves always refer to it as a gentlemen's agreement. I do not know, though, do not recollect whether in the previous discussion with Mr. Richner this expression was specially mentioned. We were talking of a declaration of readiness. We were ready to do that.

Q. Do you know of any place in your minutes where this declaration of readiness is termed a gentlemen's agreement? A. No, I do not recollect. I do not know.

Q. Will this serve to refresh your recollection? In your testimony I am reading from page 277 of the record

323 for the morning session of January 24, 1950. My question was—you had mentioned something about a gentlemen's agreement, and I said: "Now, there was a gentlemen's agreement. Is that right? "A. I do not recall whether we called it at that time a gentlemen's agreement. It was at least the expression of certain readiness. Later on, I do not know from which moment, it was called a gentlemen's agreement." A. Yes, that is right.

Q. "You were the first one to use the term 'gentlemen's agreement' concerning this conference?" A. Yes, that is right.

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325 Q. Now, tell us what took place at the July 23 meeting? A. The gentlemen were in the office room

of Dr. Schiess, and I think we informed the two gentlemen first that our Board had again occupied itself with this problem of the possible sale of the securities of Interhandel, and that we all had come to the conclusion that such a thing was not feasible. I think that was one of the subjects or topics that came up rather early in this meeting in the office of Dr. Schiess. Well, maybe other subjects were discussed. I think already then the desire of Remington Rand Corporation was shown, that they would like to have an option, a real option, an original option—something like that
326 —and I believe—I don't recall all the details of these discussions, but again we tried to make it clear that Interhandel wished to stick only and exclusively to our declaration made to Mr. Richner on June 6th.

Q. Did Mr. Schiess ask you at this meeting to define for him the terms of the oral declaration made to Mr. Richner on June 6th? A. Yes, that came up during the discussion.

Q. And did he make some notes as a result of what you told him? A. I think it is the best of my recollection that a kind of preliminary draft was submitted, and the desire was said to be "up to you gentlemen"—I mean to Mr. Archibald and Dr. Schiess, that we should make a common draft recapitulating the terms of the declaration we had already given to Mr. Richner. That was discussed. That subject came up.

Q. Did you cooperate with Dr. Schiess, and Mr. Archibald in putting down on paper the terms of the agreement which you had declared to Mr. Richner? A. Well, to a certain extent, yes. We so made it clear to these gentlemen that we, as I said before, didn't want any written document; that we just wanted the oral declaration made to Mr. Richner and not to go beyond, and nothing else, but they were urging, and they urged—well, to report to Mr. Rand
327 or to their clients as lawyers, and that—well, they suggested that something like a written capitulation would be made, and I remember quite well that a preliminary draft was prepared, as we could phrase it, and therefore

I think as primarily suggested by Mr. Archibald. We sat together and the matter was discussed.

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1622 Direct examination

By Mr. Gordon:

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1623 Q. Now, Dr. Sturzenegger, Mr. Burroughs examined you in reference to your conferences with Dr. Richner, and later your conferences with Messrs. Archibald and Schiess, so that I will not go into that. But he did not examine you about matters that occurred in March, and I will direct your attention to the time that the representatives of Remington Rand came to Switzerland and had the conferences in March with representatives of Interhandel.

Now, will you tell us what was the first of those conferences?

A. Well, the first of those conferences was the meeting on March 10th, in Basle.

1624 Q. Now, will you please state who was there, and what was said on each side, to the best of your recollection? A. Well, there were present Mr. Garey and Mr. Shorten and Mr. Richner and Mr. Schiess, and I believe Mr. Nemzek, too, and on our side, on Interhandel's side, there were only Mr. Germann and myself.

Q. And what occurred, what was said on each side on that occasion? A. Well, I cannot remember all the details, of course, and who said especially what, but the substance of what was said, to the best of my recollection, is about as follows:

Mr. Garey, after having introduced himself and Mr. Shorten, made a kind of an opening statement. He touched on the G.A.F. matter, I mean the situation of the company, and so on, and started to explain the reasons why he and Mr. Shorten had made this trip to Switzerland. And he told, among other things, that they were desirous of getting this oral declaration the way Interhandel had made it to the rep-

resentatives, I mean to Mr. Richner, the representative of the Remington Corporation, in proper shape. They were desirous of getting an option, an option in written form, as had been suggested before in the drafts that were previously submitted to us and prepared by Mr. Garey.

He said Remington couldn't possibly go on on the old basis, they had spent time and money, and they had, too, a responsibility to their shareholders, that they had to
1625 have something in their hands, and that must be an option. They said the magnitude of the deal—

Mr. Burroughs: I didn't understand that.

The Witness: The magnitude of the deal—well, the size of the deal involved required a proper form, and they said, too,—what I mean by that is especially Mr. Garey, who, I think, made the greatest part of the speeches,—they said they needed an instrument to represent our interests before the American authorities.

He referred at great length to the Assignment of Claims Act. He referred to it because, I think, we made the remark that such an option as he requested would be a very unilateral thing. He said the Assignment of Claims Act is a handicap for Remington Rand. Under this Act it is impossible for Interhandel to assign Interhandel's claim towards the American Government, to Remington Rand; Remington Rand must act on our behalf, must, therefore, have a power of attorney as it had been in the form of a draft submitted to us previously, together with the draft for the option.

He mentioned, too, that this oral declaration of readiness we had given to Mr. Richner was on a very short term basis, and that for Remington Rand it was impossible to go on, to spend money without having a binding arrangement of some great length. That this cancellation period of our declaration, the notice, the possibility of giving notice
1626 within 15 days time limit was an impossible thing for them.

So they asked us whether we would be prepared to comply with their wishes and give them the option they re-

quested, otherwise, that there was a clear menace expressed by Mr. Garey, that they didn't feel in a position to carry on the negotiations and they thought it would be better to withdraw from the negotiations, and go home.

But I am sure there were other matters, too, discussed which do not just now come in my mind. It was a very lengthy discussion, and our reaction was as follows:

We said "We cannot comply with your wishes, although desirous to come with your help to a positive result in Washington, we are not in position to give you an option, and that has been decided by our Board, and we cannot change this attitude."

We then stated that, of course, we hoped that Mr. Garey or Mr. Shorten wouldn't withdraw from the matter, we hoped that the negotiations could be continued. And we said:

"We will take up the matter with our Board, and especially have contract with our President."

And we came to the conclusion that another meeting ought to be arranged as soon as possible, and that was the following meeting in Zurich, where Mr. Iselin, the President of Interhandel was, too, present.

Q. (By Mr. Gordon) Now, that second meeting,—
1627 then there was a further meeting in Zurich, at which Dr. Iselin was present? A. Yes, sir.

Q. What was the date of that meeting? A. That was March 14th.

Q. The first meeting was March 10th? A. Yes.

Q. The second, March 14th? A. Yes.

Q. Now, who was present on your side at the meeting on March 14th? A. There was Mr. Iselin, Mr. Germann, and myself.

Q. And who was present for Remington Rand? A. Mr. Garey, Mr. Shorten, I believe Mr. Nemzek, though I am not sure. At least he was in the background, and didn't say much. I am not absolutely sure. But there was Mr. Richner, Dr. Schiess, I think Dr. Schiess was present at the other

meeting, too. I forgot to mention him. And Dr. Ulrich Wehrli, the assistant of Mr. Richner. And then there was, too, present, Dr. Henggeler.

Q. Dr. Henggeler. Was Dr. Henggeler there representing Interhandel? A. No. He was there, if I am not mistaken, on the request of Mr. Richner, and he tried to act, on the whole, as a kind of mediator.

1628 Will you please state what occurred at that meeting, what was said on each side? A. Well, again, I cannot recollect the details, but I think I could summarize it as follows:

Mr. Garey expressed the same wish, repeated what he had said before in Basle, and put the question before us whether we could agree or not to give them the option they wanted and needed. And he emphasized even more than he had done at the previous meeting, that if the wishes of Remington Rand in this respect were not fulfilled by Interhandel, they didn't see a possibility to go on with the negotiations, they thought then they would better go home and drop the whole matter.

Well, the discussion went on on both sides. We said that we had discussed it among ourselves. We had some apprehension or understanding of their viewpoint. On the other hand, we had our reasons not to change our attitude. We had given this oral declaration to Mr. Richner, and we were ready, of course, to stick to it, but we were not in a position to give them an option as they had requested.

Well, then the discussion was a little bit heated, or I should say even more than that, and especially Mr. Garey, who felt deeply disappointed. He said under these circumstances he didn't see any sense in carrying on the negotiations, and he stood up, and it looked like a complete

1629 breach.

Well, then Mr. Garey, and with him the other representatives of Remington Rand, left the room, went to the adjoining room. Dr. Henggeler followed them, and we three representatives of Interhandel were left in the board room where the meeting had started.

And I think it was the understanding that each group would try to discuss the matter amongst themselves. And so we did. We consulted each other, Dr. Iselin, Mr. Germann, and myself. And we came again to the conclusion that we could not grant them,—I mean Remington Rand Corporation,—the option.

On the other hand, of course we were desirous to have the help of this influential corporation. We were quite aware that they had made great efforts, which we appreciated, but we didn't see at that time any possibility to go further than we had gone before. I mean with respect to the declaration we had made.

After a certain time, the other gentlemen who had left the room, dropped in again, and, if my recollection is correct, it was Mr. Henggeler who tried to reconcile the different viewpoints.

We, upon being questioned by Mr. Garey, stated that we couldn't change our standpoint, but that we were eager to carry on the negotiations, and the whole matter was so serious that we thought that we should put the question with respect to the option they required, before our Board.

1630 We said "We will have a Board meeting. On the other hand, we feel the necessity to have some more direct information as to the situation in Washington. We feel obliged to send a representative, Mr. Germann, to the United States to make inquiries there."

We said that Mr. Germann then would—that was the meaning—cooperate with the Rand people, be in touch with them, but we couldn't change our attitude until we had gotten his information and his reports.

We, I think, stated, too, that we wanted to show our loyalty to the Remington Corporation by having their wishes with respect to prolongation of the time limit met, if possible, but we couldn't do that just now, that was up to the Board to decide this question, too.

But I think we stated that we would take it into consideration, and we, too, said that after the Board meeting we

would give them a written reaction and tell them our decision.

And I think after all this exchange of opinions, the whole atmosphere grew much better. Mr. Garey and Mr. Shorten realized that we really wanted to come together. He was opposed at the beginning to the contemplated trip of Mr. Germann. He thought it was entirely unnecessary. But we stuck to this idea. We told him that we deemed it absolutely necessary, we, too, had our responsibility to
1631 our shareholders.

At least there was, as I told before, a much better atmosphere. I remember that Mr. Garey stood up, shook hands with Dr. Iselin, with Mr. Germann, and with myself. And, well, we left the matter so that after the Board meeting, which should take place very soon, we would give them a written reaction.

Q. Now, is that the substance of what occurred at the meeting of March 14th? A. Yes, to the best of my recollection. I am sure there were other matters discussed. For instance, the matter of registration of Interhandel shares in the name of Remington, which they had requested, and other minor matters. But that is the substance, at least as it comes to my mind.

Q. Then you had a meeting of the Board on March 17th? A. Yes.

Q. The minutes of which have been read in evidence as Remington Rand Exhibit 17-LL. And after that meeting, a letter was sent, dated March 17, 1947, which had been authorized at the meeting? A. Yes, sir.

Q. Showing the witness—

Mr. Gordon: May I have the number? Just a minute.

Q. (Continuing)—Remington Rand Exhibit No. 7, you remember that? A. Yes, I remember that.

1632 Q. Then was there another meeting after this letter, Remington Rand Exhibit 7, had been sent? A. Yes, sir.

Q. And where was that? A. Well, it was a meeting at a restaurant in Basle.

Q. When? A. On March 19th.

Q. State who was present at that meeting on the side of Interhandel? A. There were Mr. Iselin, Mr. Germann and myself, and we had invited the representatives of Remington Rand to a dinner on this occasion.

Q. And who was present representing Remington Rand on that occasion? A. Present were Mr. Garey, Mr. Shorten and Mr. Schiess.

Q. Now, I show you Remington Rand Exhibit 29, which is the translation of your letter, and will you tell us, please, what happened at this dinner, and what was said on each side, to the best of your recollection? A. Well, first, it was just a nice dinner party, and not much business talked. At the end, business again was discussed, and, if I am not wrong, Mr. Garey took out of his pocket a document which appeared to be a translation of Interhandel's letter to Mr. Richner of March 17th.

1633 And, well, there was first a checking as to the translation, which appeared to be a translation amended by Mr. Garey, and I think that matter was chiefly discussed between Mr. Garey and Mr. Germann, if I am not wrong.

Mr. Garey then pointed out that some points had not been expressly mentioned in this letter to Mr. Richner, and that he would appreciate it greatly if these additional points upon which an understanding was reached, would be confirmed by letter to the Remington representatives.

And these points referred to the fact that the price for the GAF participation would not be discussed in case an option would later on be concluded. We further referred to the wish expressed by Mr. Garey that the option if granted would be an option in written form. And first, Mr. Garey wanted us to confirm to him that during the time the gentlemen's agreement remained in force, Interhandel should not negotiate with other interested parties.

Well, that is about all I remember. It is at least the substance of these discussions which went on on the occasion

of this dinner party on March 19th, and I remember that afterwards we wrote such a letter, and this letter was addressed to Mr. Shorten, as had been arranged before.

Q. Now, I will show the witness Remington Rand Exhibit No. 8. Is that a letter of March 20th, 1947— A. (Interposing) Yes.

Q. (Continuing)—Addressed to Mr. Bill Shorten?

1634 A. Yes. That is the one.

Q. Is that the letter that was written after the meeting you have discussed? A. Yes, and which covered the three points that were discussed this evening.

Q. Now, let me direct your attention to one particular piece of testimony given by Mr. Garey, and ask you about it—

The Court: What?

Mr. Gordon: I am going to ask him the same question I asked Mr. Germann, and I am going to read it out of the record to Mr. Sturzenegger.

By Mr. Gordon:

Q. At this dinner meeting, did you or Mr. Germann or Dr. Iselin say to Mr. Garey, or to any other of the representatives of Remington Rand, that during the period that the understanding was in effect, Remington Rand had the right to exercise the option by making an offer to purchase? A. No.

Q. Did you at any time say that to Mr. Garey? A. No, sir.

Q. Did you ever say anything like that? A. No.

Q. Did Dr. Sturzenegger in your presence? A. You mean Mr. Germann?

Q. I beg your pardon. Did Mr. Germann, in your

1635 presence? A. No.

Q. Or Dr. Iselin? A. No.

Q. What? A. No, sir.

Q. Now, let me direct your attention to certain testimony that was given that had to do with your meetings with Mr. Archibald, Dr. Schiess, and Mr. Wehrli. And I will ask you if at any of the meetings that you had with Mr. Archibald, Dr. Schiess and Mr. Wehrli, did you or Mr. Germann say

to them at any time that an option had already been granted on the General Aniline and Film shares? A. No. We didn't say that.

Q. Did you at any of the meetings with Mr. Archibald, Dr. Schiess and Mr. Wehrli, or did Mr. Germann in your presence, ever say that if Remington Rand accepted the offer before the time limit ran out and bound themselves to carry out the terms of the offer at some time in the future, that would be a good acceptance? A. No, sir. I did not.

Q. Did you or Mr. Germann in your presence ever say anything like that? A. No, sir.

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1637 The Court: Now, did you, or anyone representing or acting for Interhandel, state at the dinner meeting that an option in written form would be given?

The Witness: No. It was stated, Your Honor, that if the option would be given, and that was left open until the return of Mr. Germann, that then it would be an option in written form.

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1707 **Hans Sturzenegger** was recalled as a witness for and on behalf of the Plaintiff, and having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Gordon:

Q. Dr. Sturzenegger, I show you Plaintiff's Exhibit No. 2-A, bearing the stamp of Dr. Schiess and his signature, and ask if you—let me ask you first, have you ever seen that document before? A. Yes, it has been in my files.

The Court: I don't understand you.

The Witness: It has always been in my files since I got it.

By Mr. Gordon:

Q. When did you first see it, Dr. Sturzenegger? A. When?

Q. Do you recall when you first saw it? A. I can not remember the date.

Q. Do you know under what circumstances—that is, can you tell the Court where it came from, according to
1708 your best recollection? A. To the best of my recollection I got it from Dr. Schiess. I am not absolutely certain about it. It may have been Mr. Richner or Mr. Wehrli, but I believe it was Dr. Schiess.

Mr. Gordon: That's all. Thank you, Dr. Sturzenegger.

The Court: You may stand down.

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352 **Doctor Walter S. Schiess,** called as a witness by and on behalf of the Intervener, Remington Rand, Inc., being duly sworn, was examined and testified as follows:

Direct examination

By Mr. Burroughs:

Q. Will you state your full name? A. Walter S. Schiess.

Q. Where do you live? A. In Basle.

Q. Basle, Switzerland? A. Basle, Switzerland, yes.

Q. What is your occupation? A. Lawyer.

Q. You practice in Basle? A. I practice in Basle, yes.

Q. Do you practice anywhere else in Switzerland,
353 outside of Basle? A. Generally, no.

Q. How long have you been practicing law in Basle? A. Over 20 years.

Q. What type of law have you practiced, Doctor? A. Especially civil and corporation law.

Q. Could you tell us something of your educational background? A. I have studied in Basle, and afterwards in Bonne, and afterwards in Berlin, and I graduated from Basle University.

Q. What degree did you take? A. Doctor of Law, which corresponds to Bachelor of Law in this country.

Q. Doctor, during the war, did you have any connection with the American Embassy? A. Yes, I had.

Q. What connection? A. I was sometimes asked to give to the American Consul in Basle, opinions on questions coming up,—current questions, and I was once asked—that was

—I do not know whether it was during the war or after 1945, I had to give an opinion on Interhandel.

Q. On Interhandel? A. On Interhandel, yes, how their shares were divided, and how the shares were, how
354 the capital stock of Interhandel

Q. Now, do not tell us what your opinion was. Did there come a time when you were engaged by Remington Rand to represent them in Switzerland? A. Yes, in July, 1946.

Q. Will you fix the time during the month of July? A. No, excuse me. It was in June, 1946, in June, 1946, not in July.

Q. And what was the first thing you did in connection with your employment by Remington Rand? A. I went to the American Consul General in Basle and asked him whether he would object on my prior contact with him.

Q. And as the result of that, did you then engage yourself with Remington Rand? A. Yes, I did.

Q. And what was the first thing you did on behalf of Remington Rand? A. I attended conferences with Mr. Nemzek and I attended conferences with Mr. Richner and Mr. Wehrli.

Q. About when were those conferences? A. In June, 1946.

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357 The Witness: And, if I remember exactly, on July 19th we had such a conference, and we expected an answer from Interhandel in respect to propositions in respect to their preferred shares. And I cannot remember exactly, but I believe that at this conference also either Mr. Archibald or I brought up the question whether it would not be possible for Dr. Sturzenegger and Mr. Germann to give us the exact terms of the declaration given to Mr. Richner. And they declared that to be not possible.

They declared to be ready to come on the 23rd to my office and to help Mr. Archibald and me to draft some sort of a recapitulation of what had been said to Mr. Richner.

And at this 23rd conference were present in my office Dr. Sturzenegger, Mr. Germann and Mr. Archibald, and Mr. Wehrli of the Union Bank, and I, and there, after discus-

sions of other problems, we submitted to those gentlemen a draft of how we had understood the declaration. And then we in common checked this declaration, and I guess after those gentlemen left, Mr. Archibald and I finished the draft of what is now called Recapitulation to Mr. Richner.

By Mr. Burroughs:

Q. Doctor, I show you Remington Rand Exhibit No. 4, and ask you to examine that document and tell us whether or not that is the Recapitulation of which you spoke? A. That is the Recapitulation I spoke of.

Q. When was that drafted? A. On July 23rd, in the morning.

Q. Was it drafted during the course of the meeting?

Mr. Gordon: He has already answered that, Mr. Burroughs. I object to that question.

Mr. Burroughs: I didn't understand—

Mr. Gordon: The gentleman has testified on that point.

The Court: He has testified to some extent, but it was not clear to me whether it was drafted partly during the meeting, or after the meeting. I would like it clarified.

The Witness: Partly during, partly after. That is to my recollection.

By Mr. Burroughs:

Q. Who worked on it after the meeting? A. Archibald and I.

Q. After you drafted it, what did you then do with it? A. Then, as I appreciated the politeness of those gentlemen, I thought it would be the usual thing to do among colleagues to send a copy to them, and I sent a copy to Dr. Sturzenegger and Mr. Germann, or to Dr. Sturzenegger.

Q. Now, will you look at Remington Rand Exhibit No. 5, and tell us what that is? A. That is a copy of my letter of July 23rd addressed to Dr. Sturzenegger, with which I sent him this paper.

Q. Did you receive any acknowledgment—A. Yes, I received—

Q. —from Dr. Sturzenegger? A. Yes, I received an acknowledgment from Dr. Sturzenegger.

Q. I hand you Remington Rand Exhibit No. 6, and ask you if you can identify that? A. Yes. That is acknowledgment I received on July 24th from Dr. Sturzenegger.

Q. Doctor, would you translate that letter for us? A. Yes.

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360 "Dear Doctor Schiess: I herewith confirm the receipt of your lines of the 23rd, and thank you very much for the recapitulation"

and now it is something in French—

"de la declaration faite a Mr. Richner which you sent me."

I think that closes the sentence.

"We are in agreement at yesterday's conference that our cooperation in drafting the recapitulation could only have the sense to assist you in reporting to your clients that nevertheless between us exclusively the oral declaration of readiness given to Mr. Richner was decisive, which through the foregoing formation did not undergo any further"

Now I would like to use the word "fixation". It is not proper English, but it covers exactly what is meant in German. If it is clear I would like to leave it this way.

By Mr. Burroughs:

Q. Have you finished? A. "Yours very sincerely", or "Yours very truly..."

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389 Q. As to the translation? A. And the letter was written by them.

By Mr. Burroughs:

Q. Was the term "gentlemen's agreement" used by anyone in any of the negotiations you had with Interhandel? A. This term was used, to my recollection, for the first time in this letter which had been sent on March 17th.

Q. Had the agreement, if any existed, been classi-
390 fied in any way by anybody up to that time? A. No, I can not recollect of a special classification. It was

difficult to find a short term to express the two statements, or to refer to them. It was difficult to find a short name for it.

Q. You mean in German or in French, or whatever you used? A. We used German or Swiss.

Q. And the first time you recall seeing or hearing of it was in this letter you have just referred to? A. Yes.

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408 "Q. Doctor, did there come a time when you made inquiry of the Swiss Compensation Office concerning the status of the firm of Interhandel? "A. Yes, I did."

Mr. Burroughs: Will you mark these, please, successively, just in the order they are in, Remington Rand Exhibits, beginning with 31, I think.

The Court: How many of them are there?

The Deputy Clerk: 31 through 35, Your Honor.

(The documents above referred to were marked RR Exhibit Nos. 31 to 35, inclusive, for identification.)

Mr. Gordon: Are those translations, Mr. Burroughs?

Mr. Burroughs: No. One of them is an original
409 copy in German, and the others are translations.

By Mr. Burroughs:

Q. Doctor, will you examine RR Exhibit for identification No. 31, and tell us what that is, please? A. Exhibit No. 31 is second sheet of a letter. No, I should not say it is the second sheet. It is not the ribbon written copy, but the copy which has been—

Q. A carbon copy? A. A carbon copy. Yes, it is a carbon copy of a letter which I addressed on July 6th, 1946 to the Swiss Compensation Office, and in this letter I referred—

Mr. Gordon: We object.

The Court: Do not state what is in it.

Q. (Mr. Burroughs) No. Now, is there anything else in that letter except your inquiry? A. No. There is in this letter the answer which I received from the Compensation Office. It is written at the bottom.

The Court: Well, do not state what is there.

Mr. Burroughs: No. He said the answer is written on the bottom.

The Witness: Written on the bottom of my letter.

The Court: The original answer on the carbon copy?

The Witness: Yes, the original answer.

The Court: On your copy?

410 The Witness: On my carbon copy.

The Court: That seems a rather unusual procedure.

The Witness: It is.

The Court: You may proceed.

By Mr. Burroughs:

Q. Was that signed in your presence, Doctor? A. Yes, it was.

Q. What happened to the ribbon copy of the letter?

The Court: Do you know what he means by ribbon copy?

The Witness: Yes, I understood his question. I guess I gave it to some representatives of Remington Rand, but I don't know to whom.

Q. (By Mr. Burroughs) Did the Swiss Compensation Office keep any copy at all? A. Yes, they kept a third copy, I guess. I am not certain whether they kept a copy, but I believe that they kept a copy of what my request was, and what their answer was.

Q. Now, I ask you, Doctor, whether that request of yours pertained to the blocking by the Swiss Government of Interhandel? A. Yes.

Mr. Gordon: We object.

The Court: Sustained.

Q. (By Mr. Burroughs) Doctor, will you examine that? Well, I will put it this way,—

411 Mr. Burroughs: I will offer it in evidence at this time, if the Court please.

The Court: You are offering what?

Mr. Burroughs: That is No. 31.

The Court: In its entirety?

Mr. Burroughs: In its entirety.

Mr. Gordon: We object, if the Court please. The testimony is that this is a letter that this gentleman wrote to the Swiss Compensation Office. There is no indication that he was authorized by Interhandel to write any such letter.

Apparently, it is some sort of reply he got. I do not know what the contents of it are, but it seems to me the whole thing would be hearsay and not in any way admissible against us.

Mr. Burroughs: Now, the contention has been made that during this time, July, 1946,—Dr. Sturzenegger testified to it—that Interhandel could not have made any agreement for the disposal of its property in the United States because it was provisionally blocked.

The purpose of the inquiry was,—Dr. Schiess, representing Remington Rand, who were at that time, the testimony shows, dealing with—

Mr. Gordon: Are you going to tell the Court what is in the letter?

Mr. Burroughs: You have stated your objection,
412 and I am telling the Court the purpose of the offer.

Mr. Gordon: I object to your stating the contents.

The Court: I overrule your objection.

Mr. Burroughs: We propose to show by this testimony, and by this exhibit, that the reply of the Swiss Compensation Office at that time was that they were free, and not blocked.

The Court: I sustain the objection.

By Mr. Burroughs:

Q. Doctor, did you have any conversation with any official of the Swiss Compensation Office? A. Yes. I had a conversation with the official of the Swiss Compensation Office.

Q. With whom did you talk? A. I don't know—

Mr. Gordon: I object to his testifying as to any conversation he had with the Swiss Compensation Office. I object to this question.

The Court: I sustain the objection.

Mr. Burroughs: May I ask Your Honor to state the basis of the ruling on the exhibit?

The Court: Well, yes. The best evidence would be either the testimony of the Swiss people as to the facts, or whatever the regulation is, if there was a regulation.

Mr. Burroughs: I am coming to that phase of it.

413 The Court: The testimony of this witness would be hearsay.

Mr. Burroughs: To the letter from the Swiss Compensation Office?

The Court: I do not know what other objections there might be, but those occur to me.

Mr. Burroughs: And that includes the signature of the gentleman from the Swiss Compensation Office?

The Court: Yes.

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429 Cross examination

By Mr. Gordon:

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433 Q. I see here the words "gentleman agreement" are used. "Letter to Mr. Shorten April 21, 1947 cancelling the gentleman agreement on May 6th". That was the way you described it in these conversations, was it not, gentlemen's agreement? A. That is the way it was described since the March conferences, as I can recollect it. At that time it was—

Q. And you adopted that term yourself, didn't you? A. We did adopt this term?

Q. Yes. A. No. I am referring here to what Mr. Sturzenegger said. I am not referring to something which I said. Mr. Sturzenegger knows the term "gentlemen's agreement."

• • • • • • • • • • •

445 Q. Dr. Schiess, this is a letter written by you, isn't it your signature and written on your office stationery?

The Court: What exhibit is that?

Mr. Gordon: It has not been marked as yet, Your
446 Honor. A. No, sir. That is no letter—

The Court: Let us get the answer.

The Witness: Shall I wait?

The Court: No. You answer.

The Witness: No. That is no letter.

By Mr. Gordon:

Q. Well, is that your signature on there? A. It is my signature.

Q. So you signed it, whatever it is? A. I signed it, yes.

Q. All right.

The Court: Have it marked, please.

By Mr. Gordon:

Q. It is written on your office stationery, is it not? A. No. That is my rubber stamp put on. That is not my office stationery.

The Court: Let us have it marked.

Mr. Gordon: I beg pardon. I think it is Plaintiff's No. 2.

(The document above referred to was marked Plaintiff's Exhibit No. 2 for identification.)

By Mr. Gordon:

Q. Are you familiar with that? A. Yes.

Q. Would you like to look at it before I ask you
447 about it? A. I would like to look at it.

Mr. Gordon: Look it over.

(Witness examines document.)

Mr. Burroughs: What is the date, September 4, 1947?

Mr. Gordon: What did you say, Mr. Burroughs?

Mr. Burroughs: I asked him what the date was. I am trying to see if I can locate a copy.

Mr. Gordon: It isn't September 4th. They put their months different from what we do.

Mr. Burroughs: Whatever it is, I only want to know the date.

The Court: It might be easier if you looked over his shoulder.

Mr. Burroughs: All right. I just want to see if I have a copy. Will you tell me the date on that?

The Witness: Yes, April 9th, 1947.

Mr. Gordon: May I have Exhibit No. 8, please?

By Mr. Gordon:

Q. Are you through? A. I am through.

Q. Do you have it, sir? A. Yes, sir. May I just call the attention to the fact that—

Q. No. Your counsel will ask you questions. Unless
448 you want to change some testimony you have given?

A. No, no. This document is confidential which I have here.

Q. The document is confidential? A. Yes.

Q. All right. You don't have any objection to the Court hearing what is in it, do you?

Mr. Burroughs: Let's inquire what he means by being confidential.

The Court: It is not up to him to raise objection.

Mr. Burroughs: No, but he states it is confidential. It is all in German.

The Court: I sustain the objection to the question. You can develop what he means by confidential.

By Mr. Gordon:

Q. Mr. Schiess, this document has at the top 9-4-47. Does that mean April 9th, 1947? A. Yes, it does.

Q. In your connotation? A. Yes.

Q. You take that, and I will take the English translation. See if this is a fair translation of the first paragraph:

"Remarks on the negotiations between the firm Remington Rand, Inc., New York, on one side, and the International
Industrie" (and so forth) "on the other, regarding
449 the conclusion of an option contract in respect of Interhandel's participation in the General Aniline and Film Corporation"? A. Will you please re-read it?

Q. "Remarks on the negotiations between the firm Remington Rand, Inc., New York, on one side, and the Internationale Industrie" (whatever that is) "on the other, regarding the conclusion of an option agreement in respect of Interhandel's participation in the General Aniline and Film Corporation"? A. Yes.

Q. Is that right? A. That is the heading.

Mr. Burroughs: Mr. Gordon, may I inquire whether you have an extra copy of this translation?

Mr. Gordon: Well, I do not think so, but I would be glad to have you look over my shoulder.

Mr. Burroughs: No. What I want to do is this,—You are reading into the record from a long document that has not been admitted in evidence.

The Court: He is following the pattern that you pursued.

Mr. Burroughs: Yes, I realize that he is trying to, Your Honor, but recall very distinctly that I was met with the objection that I could not read to the witness something that had not been offered in evidence.

450

The Court: He may ask him whether or not a certain translation which he gives him is an accurate translation.

Mr. Burroughs: Of a document that is not in evidence?

The Court: And the fact that he reads it from the document instead of making his own translation, does not seem to me to be improper.

Mr. Burroughs: But he is asking him to translate a document which is not in evidence. That is my objection. This has never been admitted in evidence.

Mr. Gordon: Nor had yours.

Mr. Burroughs: No.

The Court: I thought it was in evidence.

Mr. Gordon: No.

The Court: It is not in evidence because it is your exhibit?

Mr. Gordon: Yes. I will put it in evidence in my case.

Mr. Burroughs: That is my objection, that he is reading from a document that is not in evidence. If it is in evidence, I do not object.

Mr. Gordon: Will you permit me to say the other day he read to my witness; Dr. Sturzenegger, a memorandum made by Mr. Richner, which has never been in evidence, and I do not think ever will be, and he asked Dr. Sturzenegger if that was a correct translation of it. And I am asking this man merely to translate something he wrote himself.

451

Mr. Burroughs: No. I asked him if there was any difference between his understanding of the agreement to which he had testified, and the memorandum which Mr. Richner had made.

The Court: Now, Mr. Gordon, if this were in English, you could use it, of course, for impeachment purposes.

Mr. Gordon: That is right.

The Court: Is it your intention to use this for impeachment purposes?

Mr. Gordon: Yes, sir. My intention is to use it now for impeachment purposes, and, No. 2, as an admission against interest made by counsel of Remington Rand. For those two reasons I expect to use it. He has admitted this is his signature to the document, and that it came out of his office.

The Court: Well, the usual way is to ask him whether or not that is his document.

Mr. Gordon: I have.

The Court: And if he says it is, then when your turn comes, put it into evidence for those two purposes, impeachment, and as an admission. It could hardly be an admission against interest, because he is not a party.

Mr. Gordon: He was counsel for Remington Rand at the time, representing them right at that moment.

Mr. Burroughs: You certainly have not laid the
452 foundation for impeaching him.

The Court: Well, you can ask him whether or not he made this statement. If he says he did, it can be offered in evidence at the proper time to impeach him.

Mr. Burroughs: Yes. If he says he made the statement, that is all right. But if he denies he made the statement, then you can use the document to impeach him.

The Court: He has said he signed it.

Mr. Burroughs: But he has not asked him the question, "Did you say so and so," and he has not said "I did not say it," or "I did say it."

The Court: But he asked him whether he signed it.

Mr. Burroughs: That is right.

The Court: He said he did.

Mr. Burroughs: That can be used to impeach him if it contradicts him.

The Court: I do not know what is in it.

Mr. Burroughs: But does he not have to lay the foundation to impeach him by having him first say that he made the statement, or he didn't?

The Court: That was what he was about to do when he asked for the translation?

Mr. Gordon: Yes. The translation, as soon as it comes out, it will show that there wasn't any option at this time.

He wasn't contending there was, and he was calling
453 this thing a gentlemen's agreement.

Mr. Burroughs: Wouldn't it be proper to ask him if he didn't say on such and such a date that there was no option, and then if he says no, you can read from that document. But he has to have something to impeach before he can impeach him.

The Court: Well, he has already testified that Interhandel had an option.

Mr. Burroughs: That is correct.

The Court: Now, if this is a statement made by him to the contrary, of course it is contradictory, and impeaches his testimony.

Mr. Burroughs: But should not the question first be asked "Didn't you say you didn't have an option at such and such a time"? If he says "No, I never said it", then it is proper to produce this document to show he did. What he is doing now is asking him for a fair translation, getting this document in evidence for the sake of impeachment, when there isn't any foundation laid for it.

The Court: Perhaps that step was missed. Will you ask him if he didn't make these statements on such and such a date?

Mr. Gordon: If the Court please, it is not a question of his making these statements orally. This is a letter he

wrote and gave to our people. He could very well
454 say "I didn't say this." He wrote it and signed his name.

The Court: Let me see the paper, please. It is a letter of many pages.

Mr. Gordon: I am not going to ask him about all the pages.

(Thereupon, the Court examined the document in question.)

The Court: Very well. I show you Plaintiff's Exhibit No. 2 for identification, and ask you first whether your signature is appended thereto?

The Witness: Yes, sir.

The Court: It is a letter consisting of 12 pages. Are those 12 pages all part of this document signed by you?

The Witness: Yes.

The Court: On what date?

The Witness: I would say on the date which is mentioned on the top of the memorandum.

The Court: April 9th, 1947?

The Witness: Yes.

The Court: So these 12 pages, the last of which is signed by you, represent statements made by you?

The Witness: Statements made by me, yes.

The Court: On the date in question?

The Witness: On the date in question.

The Court: Very well. You may inquire, Mr. Gordon.

455

Mr. Burroughs: May I just simply make the further statement that that does not lay the groundwork or the foundation for impeaching him, because there isn't anything at this moment to impeach him on.

By Mr. Gordon:

Q. I think we have simply read the first paragraph, Doctor. A. No, the heading.

Q. Then we come to paragraph 1. I will read this slowly, a sentence at a time, and see if you agree. "Since June, July, 1946 there exists a gentlemen's agreement between Interhandel and Remington Rand with regard to the acquisition of Interhandel's participation in the General Aniline and Film Corporation." Is that correct? A. Yes.

Mr. Gordon: Do we have another copy?

Mr. Hiss: Yes.

Mr. Gordon: I would like for Mr. Burroughs to have it, if it is not marked up.

Mr. Hiss: It is marked up.

456 By Mr. Gordon:

Q. Did he reply to that question? Was that answered? A. Yes, that is correct.

Q. That's the first sentence. The second sentence is:

"This gentlemen's agreement has been reconfirmed by a letter from Interhandel dated March 18, 1947."

Is that correct? A. Yes.

Q. And by that you referred to the letter which Mr. Garey so well translated? A. Yes, marked 17, a letter.

Q. "It is still in force and can be terminated at the earliest at any time after April 15, 1947, under observation of a period of notice of 14 days."

Is that a fair translation? A. No.

Q. How do you translate it? A. It can be "cancelled" instead of "terminated on a period of cancellation."

Q. You change "terminated" to "cancelled"? A. Yes.

Q. And "observation"? A. "Period of cancella-

457 tion."

Q. Then you would have it: "It is still in force and can be cancelled at the earliest at any time after 15th April, 1947, under cancellation of a period of notice of 14 days"? Is that correct? A. Yes, sir.

Q. The next sentence says:

"The Interhandel has persisted its intentions in the following manner, in a further letter dated March 20, 1947." Is that right? A. Yes.

Q. And the letter dated March 20, 1947, is the letter addressed to Mr. Bill Shorten, isn't is? A. Yes, sir.

Q. That we have had so much about in this case? Is that right? A. Yes.

Q. "A. That the option in question would be given in writing." Is that right? A. Yes.

Q. "B. That, apart from this, the gentlemen's agreement has the significance that the price in respect of which agreement has been reached, will not be discussed further, and that Interhandel will not take the initiative to begin nego-

tiations with other private interested parties." A.
458 Yes.

Q. That completes your paragraph 1? Is that right? A. Yes.

The Court: What do you mean by "right"? That it is a correct translation? Is that what you mean?

Mr. Gordon: No, is that the end of paragraph 1?

The Court: I think you should first ask whether it is a correct translation.

Mr. Gordon: I beg pardon. I am sorry.

The Witness: It is a correct translation.

By Mr. Gordon:

Q. It is a correct translation? A. Yes.

Q. Then, with the changes that we have made of "terminated" to "cancelled," and "observation" to "cancellation," my reading was correct, the translation of your paragraph 1? A. Yes.

Q. "2. Remington Rand requested Interhandel, as early as January, 1947, to convert the gentlemen's agreement into a written option contract." Is that right? A. Yes.

Q. "For this option contract, Remington Rand submitted a written proposal." Is that right? A. Yes.

Q. "For reasons of principle the Board of Di-
459 rectors of Interhandel still believes that it can not enter into the discussion of this option contract." Is that right? A. Yes, it is right except change "still" believes to "until today."

Q. Instead of "still" believes it should be "until today" believes? A. Yes.

Q. Well, nothing happened that day to change the situation, did it? A. No.

Q. The situation remained unchanged until Interhandel gave its purported notice of cancellation? Isn't that right? A. Yes, that is right.

Q. Will you look at—skip down a little bit, because there is a pretty long letter—paragraph 3(b), the first sentence,

I have this: "The option contract is an absolute necessity for RR as well." Is that right? A. Yes.

Q. Now then, will you skip down to the paragraph marked 2? A. Yes.

Q. The first sentence of that is:

"In judging whether the granting of such an option contract is in the interest of Interhandel, the following
460 circumstances must be considered."

Is that a correct translation? A. Yes.

Q. Then follows subparagraphs 1, 2, 3 for a couple of pages. A. Yes.

Q. Now, if you will turn to paragraph 4 of the letter, it has a "4" in the middle of the page—mine does. A. Yes.

Q. See if this is a fair translation of the first sentence of that 4:

"1. It is of particular importance to refer to the fact that Interhandel should come to a decision as soon as possible regarding the granting of an option." Is that right? A. Yes.

Mr. Gordon: Has this been marked for identification Plaintiff's Exhibit 2? A. That's all.

Mr. Burroughs: Have you concluded?

Mr. Gordon: Yes.

Redirect examination

By Mr. Burroughs:

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469 Q. What terms are used in the Swiss law to create what we call an "option" to sell?

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A. An option in a general sense under the Swiss law would correspond to what we have as disposition, which is called "offer," an offer.

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470 A. No, a declaration of readiness is just some sort of an intention of fidelity, which in reality and under

the law just exactly means nothing else as an offer. If somebody is declaring "I am ready to accept such and such," then he is making an offer under the law.

Q. How long does that offer last? Until a certain limit is put on it? A. If such an offer contains a time limit, it lasts—it is binding on the party who made the offer until the end of the time limit.

Q. And it is then followed by an acceptance or a declination to accept and refusal to accept? A. In order to bring a contract about, it would be necessary that the open
471 offer has to be accepted by a declaration of acceptance.

Q. And is it customary under Swiss law to have three steps in an agreement of this kind, first, an offer, then an acceptance, and then conditions to follow or to precede the acceptance? A. No, you have two elements which bring a contract about, an offer and an acceptance. And it does not matter under the Swiss law which words are used, either for what under the Swiss law is considered to be an offer, or which words are used for what, under the Swiss law, is contemplated as being an acceptance. You can call your offer a "declaration of readiness," and you can call your acceptance an "offer."

The first declaration is, under the law, an offer, and the second declaration is, under the law, the acceptance, and those two declarations, if they are identical in amount and the conditions are fulfilled, they bring the contract about, and anything that is behind in the meantime, that is then subsequent to the binding of the two parties.

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Q. You stated to Mr. Gordon that in June of 1946 Remington Rand had an option? A. Yes.
472 Q. Now, I understand there is no such thing in Swiss law as an option? A. Yes, sir.

Q. What did you mean when you told him that he had—that Remington had an option? A. I meant—and I am not legally speaking, because when I admitted that they had an

option, or when I was saying they had an option, then I was not speaking in the accepted term of the law, the exact term of the law. Without applying the terms of the law, and expressing myself in a definite legal way, I will state they had a right to bring a contract into existence, intimating identical or corresponding declarations of their will.

Q. Then if Remington Rand could bring into being a contract by acceptance of that declaration, what was the occasion for the effort to obtain what is known in the law in this country as an option? A. Remington Rand had the purpose to assist Interhandel in divesting, and therefore they needed some sort of—legitimation—

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473 The Court: Read back the last question. Well, never mind. I still want to know if you can give any further explanation for the effort to obtain what in American law is an option. That does not contemplate the power of attorney. I am speaking of an option.

The Witness: Yes.

The Court: You know what it means in American law, don't you?

The Witness: Yes, I understand.

The Court: Very well.

The Witness: The first element which is used for the Remington Rand representative to ask for an option was that it had to be written. Then it had to be in such a form that it was absolutely clear that Remington Rand
474 and Interhandel were definitely bound to it. Then the option which had been sent did contain quite a good number of legal dispositions which never had been detailed in the declaration given to Mr. Richner. The problems that would be in the case that the parties were dealing with would be decided in the meantime, and those problems were all dealt with in the option agreement. It was much more detailed in the legal sense, and the overall reason was the clarification of the situation. Those gentlemen from America never could understand that under our law the declaration

given to Mr. Richner was perfectly binding and O.K., and therefore they always tried to substitute another contract.

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636 **Doctor Walter S. Schiess,** was recalled as a witness for and on behalf of the Intervener, Remington Rand, Inc., and, having been previously duly sworn, was examined and testified as follows:

Direct examination

By Mr. Burroughs:

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645 Q. Doctor, under the Swiss law, how do the courts
646 determine whether a particular declaration or statement constitutes a binding offer? A. Under Swiss law, this is made under the regulation of Article 18 of the Swiss Code of Obligations, which reads as follows: "When interpreting the form and the contents of a contract, the mutually agreed real intention of the parties must be considered and not incorrect terms or expressions used by the parties by mistake or in order to conceal the true nature of the contract."

Q. Have you concluded your answer?

(No answer)

Q. If a party declares himself ready to accept an offer to sell property, how would that statement be interpreted under Swiss law?

Mr. Gordon: I object to that. That is, apparently, going into hypothetical questions based on the facts in the case, and it does not fit the facts.

The Court: Overruled. You may answer.

The Witness: Will you please repeat the question to me?

By Mr. Burroughs:

Q. If a party declares himself ready to accept an offer to sell property, how would that statement be interpreted under Swiss law?

The Court: Wait a minute. Offer to sell? You
647 mean to buy, do you not?

Mr. Burroughs: Declare himself ready to accept an offer to sell.

The Court: Oh, I see. All right.

Mr. Burroughs: Dr. Sturzenegger testified that they had made a declaration of their readiness to accept an offer from the Union Bank.

The Court: It is an offer to somebody else to buy. You said to sell.

The Witness: No, to buy.

Mr. Burroughs: Perhaps it should be "buy".

Mr. Gordon: After numerous conditions precedent. That is one reason I objected.

The Witness: Such a declaration is considered under the Swiss law as being an offer.

The Court: That is not responsive.

Mr. Burroughs: Perhaps you had better read the question back.

(The question was read by the Reporter.)

The Witness: This statement would be interpreted under the Swiss law as being an offer.

The Court: Offer to what?

The Witness: An offer to sell.

By Mr. Burroughs:

Q. On behalf of the person making the declara-
648 tion,—an offer to sell by the person making declaration? A. An offer to sell made by the person who made the declaration. Yes.

Q. What elements do the Swiss courts consider in determining the meaning of an offer? A. The words which are used, and all the circumstances which are accompanying those words used.

Q. Under Swiss law, when a party makes an offer and fixes a time limit within which an offer can be accepted, how long does an offer continue to be binding on him? A. Until the end of the fixed time limit.

Q. Where do you find that rule in the Swiss law? A. In Article 3.

Q. Which exhibit are you referring to now, Doctor? A. Article 48, Article 3.

Q. RR Exhibit 48? A. RR Exhibit 48, Article 3.

Q. Can the offerer revoke his offer before the time limit expires? A. No.

Q. Is that covered by the same Article? A. Yes.

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649 Q. Doctor, are you familiar with the word "gruppe" in Switzerland? A. Yes, and I never taught
650 German. Nevertheless, I am familiar with it.

Q. What is the meaning of that word as used in Switzerland? A. "Gruppe" has several meanings. If it is used in connections with a corporation's name, then it means this corporation and its affiliate and subsidiary corporations.

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651 Q. I am now referring to RR Exhibit 17, and it runs from 17-A to 17-R, I think—17-A through 17-R—and I will ask you to examine the minutes of October 15th, 1946—am I wrong about that?—or December 4th, 1946. Now, in there I notice certain words.—"Remington gruppe"—will you read that sentence for us?

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652 A. "The wishes of the Remington gruppe are in itself understandable from the standpoint of the interested party which wished to buy."

Q. Doctor, I notice that there is a hyphen between the words "Remington" and "gruppe". Does that have any significance in German, or in Swiss? A. This hyphen would mean that you are speaking of the "Remington gruppe" as a unit.

Q. And not as individuals in the organization? A. Not as an individual in the organization.

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660 Q. Doctor, are there any variations in the definition of the word "gruppe" in Switzerland? A. Yes.

Q. Will you tell us what they are? A. There are a number of meanings of this word in the German language. It always depends in what connection or contact the word is used. If it is used with the name of a big firm it means the firm, its subsidiaries and its affiliated corporations. If it is used in respect to a gathering of people, it means a plurality of persons, a gathering somewhere.

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661 Q. (By Mr. Burroughs) I don't think that is necessary. Can you give us an example of the use of the word "gruppe" as you have defined it, with respect to a corporate body? A. I would use it, for instance, as the next legal—that is, the biggest—group which we have in Switzerland, of a commercial corporation, and to refer, for instance, to this whole entity as to the "Nestle" group.

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679 Q. Are you familiar with the Swiss regulations adopted during or shortly after the last war, which blocked certain property or prime assets in Switzerland? A. Yes.

Q. By what authority were those regulations established, Doctor? A. They were established by act of the Federal Council.

Mr. Gordon: You mean the previous Federal Council that established the regulations shown in No. 50?

680 The Witness: Yes.

Q. (By Mr. Burroughs) Did they have the force of law? A. Yes.

Q. Did they fall into any particular category of law? A. Yes.

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A. Yes, they have the character of being what we call in Switzerland "public law" as antithesis to what we call "private law."

Q. (By Mr. Burroughs) And were these blocking regulations in force in Switzerland during the year 1946 and 1947? A. Yes, they were.

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681 Q. Did those regulations contain any provision relating to contracts to transfer blocked assets? A. Yes.

Q. Was there any prohibition in the law of Switzerland during 1946 and 1947 against contracting or agreeing to sell property? A. No.

682 Mr. Gordon: That is, in his opinion?

Mr. Burroughs: That's right.

Q. (By Mr. Burroughs) Do you know of any such provision? A. Yes.

Q. What is it? A. Of course, you would have under Swiss law the general laws that were against—for instance, what was against the general interest of the state you could not make an agreement for.

Q. Was it possible for any individual or a corporation to dispose of its property on the blacklist of Switzerland during that time?

Mr. Gordon: I don't understand that—"dispose of property on the blacklist." We haven't had a word about the blacklist yet.

Q. (By Mr. Burroughs) The blocking? A. Corporations who had the provision blocking or are definitely blocked by those Federal Council decrees, are not allowed to make conveyances or place encumbrances on their property, but they could make contracts and enter into agreements in respect to those properties.

Q. That is, they could contract—

Mr. Gordon: Don't lead him.

683 Q. (By Mr. Burroughs) You say they could make contracts respecting those properties? A. I don't get you.

Q. I didn't understand the latter part of your answer. A. They could enter into contracts or agreement, for in-

stance, into a contract to sell, but they were not allowed to convey or to encumber the property.

Q. When you say "a contract to sell," my question was in the future, if and when they were removed from the blocked list, if that removed from the blocked list any and all things which they did during the time they had been on it? A. The provisional conditions and the provisional blocking was of no importance to them, as this special law was never to be applied to them.

Q. They could not transfer the property as long as they were blocked? A. They could transfer the property, and that was an actual transfer, but it was forbidden.

Q. And had they transferred property while it was forbidden, what would be the sanctions against that? A. If they transferred property while it was forbidden, they were under the obligation to pay the Council the amount of the property they transferred contrary to
684 the Federal Council decree, into the Swiss National Bank, where this property was automatically blocked.

Q. Did that render the transfer void? A. No.

Q. I mean as between the parties? A. No. That is very typical for the Swiss law, with all those laws which were after the war, the authorities were very careful not to interfere with what we call the civil deed, the contract made between private persons, and therefore, in those public laws they did not foresee that a contract was null or void if it was contrary to one of those regulations, as long as they had a possibility to put on the remedy, or so long as it was in such laws not expressively stated.

I may add to that, that in Switzerland we had at that period cared very much that the free transfer of property by free people in the transfer of property to a man who acquired this property in good faith, was not interfered with by the special legislation we had in respect to looete good. In respect to this property it was provided that the general Swiss law for a restricted period was not applicable, but in respect to the property which could or would fall under

the Federal Council decree of February 16, 1945, such a general remedy was not foreseen, neither in the wording,

685 and it was not necessary under the sense of those dispositions.

The payment into the Swiss National Bank, the fact that any person acting against the regulations was liable to imprisonment and to a fine, were enough remedy which could help to put the sense of the wishes of the government in respect to this property with which it dealt in this Federal Council decree.

Q. Have you finished, Doctor? A. I have a further point to add.

In this Federal Council decree it is foreseen under Article 9 that in respect to companies of which the Federal government was not sure whether they should come under this regulation or not come under this regulation, they could be provisionally blocked by the Compensation Office, and such a blocking, if it was listed and afterwards it was proven that the law never should have applied to the corporation in question, it did not interfere with all the contracts and agreements which they made even during the time they were provisionally blocked.

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688 A. Yes. I would like to add one point. Under Swiss law, all contracts which are entered into are generally valid, and there must be special reasons, either in the law,—not only in the law, where a contract can be invalidated.

We have only very few types of contracts which from the very first beginning are void. One sample I could think of is the contract that a man is signing himself away into slavery. That would be a contract void and nil from the very first beginning.

But otherwise, all contracts which we have under Swiss law are valid until some reason is proven where and why they would have been voidable or void.

Q. And is that true even through the property which was the subject matter of the contract was provisionally blocked

under the law, as you have described them? A. Yes, that is true. Notwithstanding the fact that the company was provisionally blocked you could, nevertheless, in respect to this provisionally blocked property, enter into a valid agreement.

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479 **Peter Jaeggi** was called as a witness for and on behalf of Remington Rand, Inc., the Intervener, and, being first duly sworn, was examined and testified as follows through Dr. Walter S. Schiess, Interpreter:

Direct examination

By Mr. Reeves:

Q. Will you state your full name for the Court, please? A. Peter Jaeggi.

Q. Where do you reside? A. I reside in Fribourg, Switzerland.

Q. You are a native citizen of Switzerland? A. Yes.

Q. And what is your occupation? A. I am Pro-
480 fessor of Civil Law at the University of Fribourg.

Q. And your correct title is Professor Jaeggi? Is that correct? A. Yes.

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522 Q. Now, does the Swiss law contain any particular provision with respect to an offer which fixes a time limit for acceptance? A. Article 3 of the Swiss Code of Obligation disposes that the offeror is so long bound to his offer as he declared.

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523 Q. Let me rephrase the question: Is it required that the person making that kind of an offer, receive a consideration, that is, something of value to him, or something which is a detriment to the other party, in order for the offerer to be bound by his offer for the agreed period of time? A. Such requisite is entirely unknown to the Swiss law.

Q. Well, is it required in order to make the offer of the kind you have described, binding? A. No.

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524 Q. What are the provisions of the Swiss Code of Obligations which governs the interpretation of contracts? A. Article 18 of the Code of Obligations deals with the interpretation of contracts.

525 Q. Will you give us the text of Article 18 of the Code of Obligations?

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The Witness: The real and the common intention of the parties was. It does not matter, the expressions which have been used by the parties.

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The Witness: It does not matter, the unexact expressions which the parties used, the unappropriate expressions the parties used.

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Q. (By Mr. Reeves) Now, Professor Jaeggi, as the
526 interpretation is applied by the courts of Switzerland, are the particular words in which an offer or a contract is expressed, always decisive? A. No. As Article 18 says, the real intention of the parties, and not the expressions used, prevails.

Q. Does the Swiss Code of Obligations contain any provisions relating to preliminary contracts? A. Article 22 deals with preliminary contracts. A preliminary contract is a contract which provides that a definite general contract is concluded.

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The Witness: The laws say a contract in the future. It doesn't use the word "main" or "general." It says a contract in the future—a future contract.

By Mr. Reeves:

Q. Well, now, will you give us that translation again, please, of Article 22?

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529 "A. The obligation to enter into a contract can be undertaken by a contract."

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531 Q. Now, is there any rule of Swiss law as to how an offer is to be interpreted? A. For the interpretation of offers, the same applies as for the interpretation of contracts, i.e., Article 18.

Q. And what is the rule with respect to the inter-
532 pretation of an offer, and how it shall be interpreted? A. Article 18, as I mentioned, is decisive. The real intention of the parties and not the terms used are decisive.

Q. Now, Professor Jaeggi, what does the word "gruppe" in German mean? A. This word in German has different meanings, but in commercial language it means, especially in respect to commercial companies, a plurality of corporations which are economically bound together and in which one is dependent on the other.

Q. Will you give us an example of that kind of a gruppe? A. In Swiss business language, he will speak about a Bally gruppe, or a Nestle gruppe, or a Ciba gruppe.

Q. Does such a gruppe include several corporations? A. Yes. For instance, the Nestle group contains the mother company, the holding company and different production companies of which several are domiciled outside of Switzerland.

Q. Are the corporations in such a group related to each other as affiliates, or as subsidiaries and parents, or both? A. Yes, the expression of a daughter company is used in such a sense.

Q. That is as a subsidiary? A. Yes. I understand the same meaning by that.

533 Q. Now, can an offer to contract be made to that kind of a business group in Switzerland, a corporate group? A. Yes. An offer can also be directed to a group.

Q. Now, when an offer is directed or made to a group, how can that offer be accepted in order to bring a binding contract into existence? A. If an offerer addresses his offer to a group, he declares—

Interpreter de Gaffenreid: He makes known.

The Witness: He makes known that he is also ready to have the offer accepted by a member of the group, not only by the main corporation of the group.

By Mr. Reeves:

Q. Not only by the main corporation in the group. What other corporation may accept the offer? A. Every corporation which belongs to the group.

Q. And is it considered that when one corporation in the group accepts the offer, the contract is in effect made with the group? A. No, then the contract is concluded between the accepting corporation and the offerer.

Q. Now, is the right of a corporate member of such a group to accept an offer, affected by the date of its organization? A. No. It means the accepting corporation has to be in existence at the time when it accepts the

534 offer.

Q. Is it required that it shall have been in existence,—that that corporate member of the group shall have been in existence at the time the offer was made? A. No.

Q. Now, Professor Jaeggi, are you familiar with the Swiss regulations which were adopted during or shortly after the war which blocked certain foreign-owned assets in Switzerland? A. Yes.

Q. By what authority were those regulations established? A. By the Swiss Federal Council.

Q. And did they have the force of law? A. Yes.

Q. Did they fall into any particular category of law in the Swiss concept? A. It was so-called, decrees based upon

special powers which the Federal Council obtained at the beginning of the war.

Q. Is any distinction drawn in the Swiss law as between public law and private law? A. Yes.

Q. And what is that distinction, please? A. Public laws are all dispositions which regulate the duties of the citizen towards the State. Civil law we understand as being the regulations which regulate the relations between
535 the citizens amongst themselves.

Q. And did the blocking regulations which were in force, fall into one or the other of those two classifications? A. Yes. They have been public law.

Q. Were these blocking regulations in force in Switzerland during the period beginning June 6th, 1946, and thereafter? A. Yes.

Mr. Gordon: If the Court please, I take it what this gentleman is saying, all the way through here he is testifying to his opinion as a lawyer, and not as to facts in that regard. The way the question is asked I object to it and move to strike it. They asked him if certain things were in effect. If he is asking this gentleman his opinion, I would think it would be all right. May we have that clarified?

The Court: I take it, this is opinion testimony. It was testified by Dr. Sturzenegger that they were in force during the period.

Mr. Gordon: This is all opinion testimony?

Mr. Reeves: So far as this witness is concerned. What is the answer, please?

(The answer: "Yes", was read by the Reporter.)

By Mr. Reeves:

Q. Are you familiar with the regulations, Profes-
536 sor Jaeggi? A. Yes.

Q. What did they provide? For that purpose, I hand you RR Exhibit No. 46.

Mr. Gordon: Excuse me. Is that the cumulative one, the collection?

Mr. Reeves: It is simpler to use that than to follow the various amendments.

Mr. Gordon: I just want to be sure.

The Witness: I use the law as amended on July 3, 1945. It seems to me that Article 2 is the most important one. This Article contains two dispositions. The first Article referred to assets located in Switzerland, and which belonged to persons natural, or to juridical persons who were domiciled in Germany. In respect to those assets, it is provided in Article 2, Section 1, that only with the consent of the Swiss Compensation Office they may be conveyed.

Interpreter de Gaffenreid: The exact translation would be that they may be disposed of.

Interpreter Schiess: No.

(Thereupon, a discussion ensued between the Interpreters.)

Interpreter de Gaffenreid: I suggest the German text.

Interpreter Schiess: Verfugen.

537 The Witness: Section 2 deals with assets located in Switzerland within the hands of persons domiciled in Switzerland, but in respect to which persons domiciled in Germany had a decisive interest.

Interpreter de Gaffenreid: An important interest—decisive interest.

Interpreter Schiess: A decisive interest.

The Witness: In respect to those assets, it is also provided that only with the consent of the Swiss Compensation Office it may be disposed of.

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543 Q. In your opinion, Professor Jaeggi, did the blocking regulations have the effect of invalidating or making void contracts to transfer blocked assets which were entered into while the regulations were in force? A. Two answers have to be given. First, those regulations only refer to the transfer of property and not to the contract and obligation in which parties enter into.

Mr. de Graffenreid: The exact translation is a contract which only calls for the disposing of property.

Dr. Schiess: And not to a contract which only calls for the disposing of the assets.

Mr. Reeves: Is that the entire answer?

Dr. Schiess: No.

A. (Through Interpreter Dr. Schiess) In the second line I have to make the distinction between Public law and Civil law as we are speaking about. The question whether a law, whether a transaction is not valid, is a question of civil law. Those regulations, as I have said, are of public law. We have the following regulations—in the civil jurisdiction you have the following: a contract which is against
544 civil law—a contract which is contrary to the public law is only nil if the public law so provides, is expressly provided, if the sense or the purpose of the public disposition requires that.

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562 Q. Now, I think that you, if I heard your testimony correctly, and if my notes are correct, when you interpreted this word "gruppe" you said it might have several meanings; that one meaning meant the parent corporation and its subsidiaries. Is that correct? A. It is not entirely correct. If the word "gruppe" is used in German, in a German group, it has several senses, but if it is used together with the name of a firm, then it has the sense I gave it.

Q. Have you any Swiss statute that says that? A. No, in the Swiss statutory law this word "gruppe" does
563 not appear, in my opinion.

Q. In your opinion? A. Yes.

Q. Can you refer me to any decree or executive order that defines the word "gruppe"? A. No, the word gruppe is not judicially a technical term. It is a word which is used in business language.

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566 Q. Assume that Remington Rand was represented in Switzerland by Dr. Schiess, its Vice President Mr. Nemzek, its Vice President Mr. Shorten, its Vice President Mr. Garey, and various persons in the Union Bank.

The Court: And the General Counsel, Mr. Garey?

Q. (Continuing) And General Counsel, Mr. Garey, and the words "Remington group" was used by someone who had been dealing with all of those persons as representatives of Remington, could not the words "Remington group" have the meaning of referring to that group of representatives of Remington?

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A. It seems to me perfectly obvious that the "gruppe" could not be applied in this case. In such a case one
567 would have spoken of "the Remington people" but not of the "Remington group."

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577 Redirect examination

By Mr. Reeves:

Q. Professor Jaeggi, are all of the words and terms which are used between parties in the course of nego-
578 tiations considered by the Swiss courts in determining what kind of obligations the parties may have assumed? A. To know the real intention, the totality of all circumstances.

Q. The real intention?

Interpreter de Gaffenreid: And the next word.

The Witness: The real intention of the parties has to be taken into consideration, and all the circumstances which are within this case have to be taken into consideration, the real intention of the parties and all the circumstances, the totality of the declaration, the expressions used, and all other circumstances have to be taken into consideration.

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579 By the Court:

Q. In the case of ambiguity or uncertainty in a contract, I understood the witness to say that the court might look to surrounding circumstances. Ask him to define what he means by surrounding circumstances. A. May I make a sample?

Q. If you cannot answer any other way, you may give an example. A. Let's assume somebody uses the words "I offer, when there are circumstances, as I understood it, might be taken that the words have been used as in an advertisement in the newspapers, or as is the case when a contract was made.

Q. Under Swiss law, can the meaning of an uncertain contract be determined by the court—

Interpreter Schiess: Now—

The Court: Wait a minute.

Q. (By the Court) (Continuing)—by looking beyond the contract, outside the contract, as to the meaning of the parties? A. Yes. The Swiss law even provides for tacit declaration of wills, and in such a case the will is only derived from the circumstances.

Q. Do I understand under Swiss law, an offer to sell given without consideration to support it, is binding
580 on the offerer prior to acceptance? A. Yes, binding for such a limit of time as the offerer declared he would be bound.

Q. And during that period the offerer could not withdraw the offer prior to acceptance? A. No, unless he made a reservation, but then is no longer an offer as the law is speaking of.

Q. Then an offer is binding on the person giving the offer without consideration, but not binding on the person to whom it is made prior to acceptance? A. Yes. That is exactly it.

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583 **William E. Shorten,** called as a witness for and on behalf of the Intervener, Remington Rand, Inc., being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Burroughs:

Mr. Shorten, state your full name, please? A. William E. Shorten. S-h-o-r-t-e-n.

Q. Where do you live? A. New Canaan, Connecticut.

Q. What is your occupation, Mr. Shorten? A.
584 Vice President of Remington Rand, Inc.

Q. And how long have you been Vice President of Remington Rand? A. Since October 9th, 1946. I was Assistant Vice President before that.

Q. How long have you been connected with Remington Rand? A. Since March 1st, 1945.

Q. March 1, 1945? A. 1945. That is, directly with them.

Q. Mr. Shorten, are you acquainted with Doctor Hans Sturzenegger? A. I am.

Q. Are you acquainted with Doctor Felix Iselin? A. I am.

Q. And Mr. Walter Germann? A. Yes.

Q. I will ask you when you first met those gentlemen? A. I met Mr. Sturzenegger for the first time on March 10th in Basle, Switzerland.

Q. When did you meet the other two? A. I met Mr. Germann on the same day. I met Mr. Iselin in Zurich, Switzerland on March 14th.

Q. Now, prior to that time, had you had any contact with any representative of Interhandel concerning the possible purchase of General Aniline and Film stock? A.
585 Yes, I did.

Q. Where, and who was it you had that contact with? A. In the year 1945 I had a contact with Mr. John Wilson, their attorney in Washington, here.

Q. When did you start working on the Interhandel-GAF matter? A. In the year 1945.

Q. What did you first do in connection with it? A. At first I collaborated with Mr. Wilson with respect to getting a license to go to Switzerland with Mr. Wilson to negotiate with Interhandel.

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604 Q. Will you examine RR Exhibit 9 and tell us whether you can identify that? A. Yes, I can.

Q. What is it? A. A letter dated April 21, 1947, from Interhandel, signed by Dr. Iselin and Mr. Germann.

Q. Who is it addressed to? A. It is addressed to attention of Bill Shorten.

Q. What did you do after you received that letter? A. I called for an appointment with Interhandel.

Q. When you say with "Interhandel," whom do you mean? A. Dr. Iselin and—no, not Dr. Iselin, Dr. Struzenegger and Mr. Germann.

Q. Did you have an appointment with them? A. I did.

Q. Where and when? A. At the Interhandel office, I was accompanied by Dr. Schiess.

Q. When was it? A. On April 22nd.

Q. The same day you received the letter? A. The same day I received it.

Q. What took place at that meeting? A. Well, I asked them the reason for this cancellation, and Dr. Struzenegger said they had had two Board meetings and decided to
605 take this action; that Mr. Germann had been here in America, and while he was impressed with Remington Rand as a company, he found that Remington Rand had no priority to get—

Q. To do what? A. Had no priority.

Q. To do what? A. To get the General Aniline and Film stock. I told them that I had been telling them ever since I had been in Europe that we had no such priority. They said that this was the action of the Board; that Mr. Germann was going back to America, and he would see Mr. Rand.

I then made the pencil notations on the letter, because they had no hour of the day on March 6th at which time the agreement was to be canceled.

Q. Did you say March 6th? A. I am sorry, May 6th. Dr. Struzenegger said, "Yes, I had not thought of that." We talked it over, and he agreed that we had the entire day of May 6th, and I put this notation on here accordingly in their presence.

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Cross examination

By Mr. Gordon:

628 Q. prior to your visit to Switzerland in March, 1947, did you give any authority to represent Remington Rand to anyone? That is, in this matter. A. Either in Europe or this country?

Q. Well, let us start with Europe. Anyone in Europe? A. No.

Q. All right. Anyone in this country? A. Yes. I made an agreement with our attorneys, then Cummings and Stanley.

Q. When was that, Mr. Shorten? A. It was during the year 1945.

Q. And from 1945 down to the present time, Messrs. Cummings and Stanley have had authority to represent Remington Rand. Is that right? A. Yes.

629 Q. In this matter? A. Yes.

Q. What is your answer to that? A. Yes.

Q. Yes. And that includes former Attorney General Cummings? A. Yes.

Q. And Mr. Burroughs? A. Yes.

Q. And Mr. Max O'Rell Truitt? A. Yes.

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727 **Eugene L. Garey** was called as a witness for and on behalf of the Intervener, Remington Rand, Inc., and, being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Burroughs:

Q. Mr. Garey, will you state your full name, please? A. Eugene L. Garey, G-a-r-e-y.

Q. Where do you reside, Mr. Garey? A. I reside in New York City and in Mount Kisco, New York.

Q. What is your occupation? A. I am a lawyer by profession.

728 Q. Where is your office located? A. No. 63 Wall Street, New York City.

Q. How long have you been practicing law, Mr. Garey? A. Thirty-seven years.

Q. And what has been the nature of your legal work? A. Corporate and trial, general practice of law, I suppose, is about the best way of describing it.

Q. Have you had any connection with the firm of Remington Rand, the Intervener in this case? A. I have.

Q. In what way? A. In a professional capacity. I have acted as their lawyer for the past fifteen or more years.

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734 Q. Mr. Garey, I hand you what have been marked for identification as RR Exhibit Nos. 51 and 52 and ask you whether you can identify those documents? A. Yes. RR Exhibit No. 52 is a photostatic copy of a proposed option agreement which I drafted in the letter part of December 1946, and finished in the first early day or two of 1947.

RR Exhibit No. 51 is a photostatic copy of a power of attorney which I drafted at the same time that I drafted RR Exhibit No. 52.

Q. And are those the documents you referred to when you said you submitted drafts of the option agreement and power of attorney to Mr. Wilson? A. They are.

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737 A. I met Dr. Sturzenegger and Mr. Germann on March 10th, 1947, at the office of Interhandel in Basle.

Q. Was there anyone else present but the three of you? A. Yes. In addition to Dr. Sturzenegger and Mr. Germann there was present Mr. Richner.

Q. Tell us who Mr. Richner is. A. Fritz Richner is general manager of the Union Bank of Switzerland. Mr. Wehrli, a lawyer connected with the Bank and who acts as Mr. Fritz Richner's assistant, Dr. Walter Schiess, Mr. Shorten, Mr. Leo P. Nemzek and myself, I think, constituted the gathering on that occasion.

Q. How long did this meeting last, do you remember, Mr. Garey? A. Yes. It lasted around three and a half—three or three and a half hours.

Q. Now will you tell us what took place at that meeting? A. Well, first, we were introduced to Dr. Sturzenegger and Mr. Germann. I had known of them, but I had never met them until this particular time. And there were the usual pleasantries and greetings, inquiry about what kind of a crossing we had had. And after those preliminaries were disposed of—

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738 A. I told Dr. Sturzenegger and Mr. Germann the purpose and object of our visit to Switzerland. I stated to them that we had been sent over for the purpose of bringing to a head our relations with the Interhandel; that we had devoted a great deal of time to their interest; that Mr. Rand was of the opinion that altogether too much time of the executives of Remington Rand was being devoted to the GAF situation, and that he was unwilling longer to continue with the situation unless Interhandel gave
739 us a definitive written option; that that was necessary from a business standpoint so far as Remington Rand was concerned, and it was necessary if we were to be effective that we get such a document.

I told him that unless such a document was given to us that we would withdraw from further interest in the Interhandel—GAF situation; that we had come over to present our views and to make that situation as clear and as em-

phatic as we could, with a view of inducing Interhandel to give us the written option, and that if they were unwilling to do that, to terminate all further Remington Rand interest in the situation.

I asked Dr. Sturzenegger, to whom at this first meeting I addressed most of my remarks, whether or not he had received the written option and power of attorney and he stated he had.

The Court: He stated what?

The Witness: He stated he had.

Mr. Gordon: Does the witness mean these you have introduced in evidence, Remington Rand Exhibit 51 and 52?

By Mr. Burroughs:

Q. Those are the ones you are talking about, Mr. Garey?

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740 The Witness: I told him that—I think the first question I asked him was to this effect: "Doctor, you know that the American Government wants you to consent to the sale of the GAF shares by the Alien Property Custodian and to let your claim with respect thereto follow the proceeds. I think the first question we should get settled is, are you going to give such consent, or, are you not, because if you are going to give such consent, then it is useless and profitless to consider any discussion, or to continue any discussion about getting a written option. We are going to see what we can do with the American Government if you are going to consent to the sale."

He said "Our Board has considered that and has reached the firm determination that we will never give such a consent."

So then I pointed out to him that we had been very helpful with the Swiss in defeating this legislation, that if
741 that legislation had gone through, as at one time it certainly looked as though it was, that there wouldn't be any question of option or there wouldn't be any GAF shares to option, because there wouldn't be any GAF shares owned by Chemie.

And he expressed his gratitude and appreciation for what Remington Rand had done in that respect; said he understood and had been advised that the credit for defeating that legislation should go to Remington Rand, and he wanted me to know that they were very grateful and most appreciative of what Remington Rand had done with respect to that legislation.

He asked, however, why and for what reasons we were not willing to proceed on the basis that we had been proceeding for the past six or eight months, under the oral option. And I told him there were a number of reasons why we wouldn't do this. I told him first that in the discussions we had had with the Attorney General in an effort to cause him to look with favor upon the return of the Chemie assets which he had vested, we had explained our interest to the Attorney General by stating that we had such an option.

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742 The Witness: (continuing) And the Attorney General asked whether or not it was in writing. We had told him it was not, and that he had suggested to us to get the option in writing and then see him further; that that placed us in the position where there was nothing further as a practical proposition that we could do in behalf of Interhandel with the Attorney General unless and until we fulfilled the conditions he had imposed upon us; that it was a sine qua non to any further activity of the Department of Justice with respect to GAF shares, that we get the written option.

And then I told him that as a matter of business judgment we were unwilling to deal with a situation of the magnitude involved in our option agreement with them, unless it was definitive and was in writing.

I told him that for us to go forward would require the expenditure of large sums of money; that the Government had very carefully investigated this GAF situation, and that the least that could be done by Chemie was to make an in-

vestigation at least as thorough and as full as the Government had, and that by doing that two things could be accomplished—we would have the facts to submit to the Attorney General to induce him, if we could, to return the shares; and, secondly, if that was not possible, that at least the investigation would have been made in preparation for the
743 litigation.

I told him that was going to cost a great deal of money for Remington Rand to do that, and that we could not safely expend those sums of money unless our rights with respect to those shares were definitely outlined by an option in writing of substantially the general character that I had given to him.

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747 A. And I pointed out to Dr. Sturzenegger that a deal of this magnitude should be, from our standpoint, in writing so that we would definitively know specifically what our rights were, and have those rights defi-
748 nite and the necessary conditions connected therewith, so that we would know exactly where we stood, and that our rights would then no longer be subject to possible misunderstanding, and that we must have the agreement in writing from the standpoint of business. I pointed out to the Doctor that we had an action in the United States that we called a "stockholders derivative action", whereby a stockholder could hold a management and the Board to a strict accountability for the lack of prudent, ordinary prudent business judgment, and I thought that possibly the directors of Remington Rand would be guilty of a lack of ordinary prudent business judgment if they undertook the task that was ahead of aiding the Swiss in getting back their properties from the American Government without having their rights definitively outlined in a written option. Illustrative of that I took up a memorandum of the June 6th declaration.

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750 Q. What did you do with this document which you had, Mr. Garey?

A. I had it on the table in front of me as I was talking to Mr. Germann and Dr. Sturzenegger, and I pointed
751 out the fact that from my standpoint I was not satisfied with that arrangement, for a number of reasons which I proceeded to state.

The first thing I pointed out was, I said I thought it would be in the interest of the Swiss just as much as in Remington Rand's interest to have our arrangement clear and expressed and thoroughly understood by both sides. I told them I was apprehensive that a deal expressed in those terms might be held to be in violation of the Assignment of Claims Act, and I had brought with me the particular volume of the United States Code annotated, and I proceeded to read to Dr. Sturzenegger and his associates the provisions of that statute, and I told him that in my opinion the Government could take advantage of the deal in the form which then existed, and would take the position, for whatever value it might be worth, that the agreement we then had with the Swiss violated that act, and that that question might not be judicially determined until after the period of the statute of limitations had run, and that that alone might be an important factor in defeating the Swiss claim, in the event litigation ensued and the Swiss assets could not be obtained without recourse to the No. 9(a) proceeding. We discussed that at very considerable length, and I pointed out to the Doctor that it was to his interest to make this deal as simple as could be.

752 I took a piece of legal cap paper and I put down the package in one column and then I took two other columns and I headed one Remington Rand and the other one Interhandel, and I said that this arrangement evidently proceeded upon the theory that Remington Rand would get these assets back for the Swiss, and that that was not what would happen. I pointed out to him that the assets when, as and if returned would go to the Swiss and not to Reming-

ton Rand, andthat this particular form of agreement required the passing back and forth of the different elements that the package consisted of; that all the agreement provided in the final analysis was that, conditioned upon the return of the GAF shares to Chemie, with their other assets, that then Chemie would sell the GAF shares to Remington Rand for $25,000,000. As I entered into that part of the discussion I said: "Now, of this package we have these items in it: we have the GAF shares, we have the Interhandel shares, we have the cash, and we have Remington Rand's check for $25,000,000." And I moved those into his column, showing that the final analysis giving effect to this agreement was that Remington Rand paid $25,000,000. I said, "Is there any question, Doctor, about price?" He said, "No, $25,000,000 is the price." And I said, "Of course, because you will control this situation, we don't need to put our agreement in this form at all. The agreement that I have already sug-
753 gested is the best form, and I think if we put the agreement in that form we will not be subject to a challenge that it violates the Assignment of Claims Act. So it is in your interest just as much as in our interest to simplify this thing and get it down to a basis where no possible jeopardy or prejudice may arise that could conceivably defeat your claim against the American Government. Now, this paragraph you have got here, Doctor, about discrimination. You know that the discriminations have been removed, and as near as I can figure out, what you want us to do is to get for you a certificate of good character from the American Government, and you won't even be satisfied with that, you want us to get also a written apology from the American Government to you because of what they have done with Interhandel's shares. Now, we might just as well settle that right now. The American Government will never give you any such apology, and as a practical proposition you ought to be pretty well satisfied, Doctor, if you get back your property from the American Government. That will be a

sufficient apology for anybody. But you are not going to have the American Government apologize to you for what they have done."

The Doctor smiled a little bit and said well, he just felt I was probably right about that.

Then I said: "Well, let's simplify this, Doctor. Let's simplify it, and then we can proceed further. Are
754 you willing for your protection and for our protection, because while this agreement is good as between the parties, it may, as I told you, jeopardize your rights against the American Government—are you willing to write the thing on the basis I suggest, because I think any other course is fraught with danger to you?"

So we turned at that particular moment to the written option again, and I pointed out to Dr. Sturzenegger that it would be an important advantage in dealing with the Department of Justice to have that written option, because it would assure them of the good faith of the Swiss in permitting the property to be Americanized; it would be evidence of the fact that if the shares were returned to the Swiss, they would not be retained by them but would be immediately sold to Remington Rand. I told him that the execution of this written option that I wanted would be evidence of that good faith and would be important in assuring the Attorney General that if he did return the property to them it would not be in violation of the policy to Americanize a company like GAF. And I discussed at some considerable length the policy of the American Government with respect to Americanizing this property, and the reasons therefor, and Dr. Sturzenegger said that he recognized the fact and the Board had recognized the fact that they could never own GAF again; that they would have to recog-
755 nize the fact that the American Government would insist upon the Americanization of it, and they were prepared to accept that, to recognize that as a fact, and deal with the situation accordingly.

I then went back to this piece of paper and I said: "Doctor, why don't we simplify this thing? Why don't we get this thing where we both understand what it is?"

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A. (continuing) And what our respective rights and obligations to each other are, and I said it would be a big convenience to Remington Rand if we could close this transaction in New York rather than over in Switzerland—

756 "At the time we take this stock over there will be some financing to be done, and it would be a great convenience to us if we could close the deal in New York instead of in Switzerland."

The Doctor told me he could not agree to that at all. I pressed him as to why, again assuring him that it should make no difference to him but would be a convenience to us. He said "no," he would not agree to that at all, that the deal must be closed in Switzerland. Finally, in the discussions we had, he pointed out that he was afraid that if the deal was not closed in Switzerland at the time they parted with the GAF shares, and he would not have his money in Switzerland, the United States Government would find some way to take $25,000,000 away from him, and that is why he wanted the deal closed in Switzerland, so that when they parted with their shares over there they would have within their own country the $25,000,000 that they were being paid for it.

So I said, "Well, I don't suppose, Doctor, in view of the very firm position you take in that regard, there is any reason for discussing that any longer. It would be a great convenience to Remington Rand, but as long as you want it that way, that is O.K. with me. I would like to have you change your mind about that, but we can discuss that some time in the future if we ever reach that point."

757 Then I said: "Are you prepared to accept my views with respect to what is best for both of us, and state this in simple option form?" He said yes, he was prepared

to do that; he thought that was the best thing to do under all the circumstances, particularly in view of the discussion we had had about the Assignment of Claims Act and the possible difficulties that might arise if the Government should allege that this transaction between us violated that act.

Then I asked him what objection, if any, he had to the proposed written option I had given to him, and he said he had none, but he would want to get Mr. Wilson's views on it. I suggested that he send for Mr. Wilson, and he said that before he would do that he would want to take the matter up with his Board. I told him that I had urged Mr. Wilson to come, and regretted the fact that he had not come, but that he could get over in two or three days and we could complete the whole transaction while he was there. He said there were certain fundamental questions that he would have to consider first before he would agree to give us the option in writing. I asked him what that was, and he said the question of time. So I said to him: "Doctor, you might just as well be realistic about this. We can't work under an option that has got a dead line in it, any more than we can work under a dead line under the
758 oral option. We are not willing to work under that oral option, and practically what you are going to have to do is to give us an option that will run until a final determination of the Swiss claims, either final determination favorably or unfavorably, because you put us in an impossible position to always be working against the dead line, in the hope that if we need more time you will grant it. Now, we want this thing done. If we can do it in two weeks, we will do it in two weeks, and if it takes a year, we want a year to do it. We have no more idea than you have how long it is going to take. It is necessary, in my opinion, Doctor, to get busy as we can right now on the matter, because we have had discussions with people who are now holding office. Next year is election year in the United States. It is possible that those same people will no longer

be in office. During a campaign year you will have a very difficult time trying to persuade them to do what we want done, and I would like to get started on this thing before we get into the year 1948, with the campaign on and the possibility that the present Administration will not be returned to office and we will have to start the thing all over again with a new group of people. So it is important that we reach a prompt decision on this matter, and I wish you would send for Mr. Wilson."

Well, the Doctor was unwilling to say he would do
759 that, until he had discussed the matter further.

Then we entered upon a discussion of probabilities, probabilities whether or not we could or thought we could, obtain a return of the Swiss assets that had been vested, without recourse to litigation, and I told him that, of course, that was the advisable course, the most advisable course to pursue if it could be done, and I gave him my reasons for the advisability of coming to an agreement with the Attorney General without the aid of a judicial proceeding, if we possibly could.

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A. (continuing) I stressed the fact that the litigation might run for a very long period of time, and I told
760 Dr. Sturzenegger that there were some matters in the Department of Justice arising out of the First World War that had not yet been determined, and I pointed out that the GAF property was deteriorating, that it was in the hands of politicians and was being run by politicians for political purposes, to the detriment of the business; that they were losing their skilled technicians and brains to competitors because of the uncertainty that existed in the minds of important men in the GAF organization as to who was going to control the business in the future, and what their relationship to the new owners would be, and that before all the brains were taken away from GAF by their competitors, some disposition of this property should be made in order to get it into the ultimate hands at the earliest possible

moment, before the values that were in it disappeared or deteriorated to such an extent that nobody would want to touch the property at any such price as we were discussing.

I discussed with him the fact that there were conversations then going on, and there was a group in the Government that were endeavoring to nationalize GAF patents and offer them to the general public without compensation for the use of these patents, and I pointed out that if something was not done to stop that, great value would disappear from the property in the event these patents were nationalized, thrown open to the general public, and that
761 something would have to be done immediately about that, and that one fortunate circumstance that existed was that in this particular case the Alien Property Custodian was opposed on the other agencies of government who were desirous of having these patents nationalized, and we could at least start in with the Alien Property Custodian having the same view as we did, that the patents should not be nationalized, but that was a possibility because the group in the Government that was back of this had a great deal of power and were determined to nationalize these patents; that if that was done, we would not touch the property for $25,000,000, and something would have to be done about that right away.

I discussed that with the Doctor, the effect of nationalizing the patents, and the disadvantageous position from a competitive standpoint that GAF would be in if the patents were nationalized, and I again impressed upon him the need for a very prompt decision. I told him that we were not going to stay in Switzerland very long, and I urged him to give us a prompt answer as to whether or not he would give us the written option and the power of attorney to give us the tools to do the job.

By Mr. Burroughs:

Q. Did Dr. Sturzenegger make any reply to that, or did Mr. Germann say anything? A. Yes, this talk was back

762 and forth. The talk was mostly between Dr. Sturzenegger and myself. Mr. Shorten and Mr. Germann would occasionally make some observation or statement or ask a question either of Mr. Shorten or of myself. Mr. Shorten sometimes stepped into the discussion and carried on further illustrations or emphasized a point I had made, and sometimes I would do the same where he had participated in the discussions.

Q. Mr. Garey, you said that you told Dr. Sturzenegger that Remington Rand could not work against a dead line. Had there been any dead line discussed prior to that statement?

Mr. Gordon: I object to that statement—leading.

The Court: Ojection overruled.

A. The agreement that we had then provided that it could be cancelled on two weeks' notice.

Mr. Gordon: I object to that and move it be stricken out.

The Court: I don't think it is responsive.

Mr. Gordon: It is a conclusion and not responsive to the question. The Witness is giving his conclusion.

Mr. Burroughs: The question was: had there been anything said about the dead line prior to your statement that you told Dr. Sturzenegger that Remington Rand could

763 not work against the dead line.

Mr. Gordon: When had anything been said by whom or when?

Mr. Burroughs: At this conference. That is what we are talking about.

A. Yes, I told Dr. Sturzenegger that we were unwilling to always work against the two weeks dead line, where they could cut our rights out from under us, no matter what stage the matter had progressed to, by simply two weeks notice, and that we were unwilling to go along any further on that.

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764 Q. Did Dr. Sturzenegger say anything to you with respect to the dead line? A. Yes.

Q. What? A. He said he thought two weeks was a pretty short time, and that possibly it would be considered that a longer time should be given to us. He did not know how long it would be, and I said to him: "Doctor, you might just as well make up your mind to one thing. The question is: do you want to marry Remington Rand until this deal is finished, or don't you? That is the ultimate question you are going to have to decide, because no other arrangement is satisfactory."

The Doctor said he recognized the merit in that.

765 He thought that was probably true, but at that particular time he was unwilling to make any commitment about giving us an option in writing until he discussed the matter with the Board further; that at that particular time he would not say he would give it to us in writing, but they would consider changing what I referred to as the "dead line," whereby our rights could be terminated on a two weeks notice, and put us in the position where we would then have to make the offer to purchase, that the agreement provided for.

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767 The Witness: Before he could give the written option he would have to consult Mr. Wilson, and that until he had talked to Mr. Wilson he would not make any commitments with respect to the written option at all; at the time he had entered into the June 6th agreement he had not advised Mr. Wilson of that, and his failure to do so had led to some misunderstanding in connection with Mr. Wilson, and he didn't want that kind of a situation to occur again, and therefore he would want to talk to Mr. Wilson before he made any commitment in that respect to us.

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768 Q. Did there come a time when you met with the gentlemen again? A. Yes, I met with them in the afternoon of March 14, 1947, in the Board Room of the Union Bank of Switzerland at Zurich.

Q. Who was present on that occasion? A. Well, we got there before half-past one or thereabouts, as near as I
769 can now recall, and were ushered into a reception room connected with Mr. Richner's private office, and sat there for 20 minutes or half an hour, and then we were shown into the Board Room. I say "we," I mean Mr. Shorten, Dr. Schiess and myself. There were present at the time we entered the room Mr. Iselin, Dr. Sturzenegger and Mr. Germann, Mr. Richner, Mr. Wehrli and Dr. Henggler.

Q. Had you met Dr. Henggler before this occasion? A. No, this was the first time I met Dr. Henggler. I was introduced to him, and my associate, Mr. Shorten, was also. Dr. Schiess knew him.

Mr. Shorten and I were also introduced to Dr. Iselin. At that time Dr. Schiess, of course, knew Dr. Iselin.

Q. Tell us what took place then. Who opened up the conversation and so on? A. Well, I don't know as I can state who opened up the conversation, but the substance of the conversation, however it was begun, was "Have you gentlemen reached any conclusion with respect to giving us the option in writing we came for, and the power of attorney?" And Dr. Iselin, I believe, replied, stating that they had concluded that they should not give us a written option until they had first sent Mr. Germann to the United States, and I think Dr. Sturzenegger said, in substance, that
770 as I had asked them at a preceding meeting to have sympathy with their position because of certain legal, possible legal consequences to our management, that they too had stockholders to whom they were answerable. He said he regretted the fact that Remington Rand had become such large stockholders in Interhandel because it offered a complication; it might look as though they were giving an option to Remington Rand because they were large stockholders, and therefore favoring one stockholder as against another, and that was a circumstance that they had to give consideration to, and they regretted the fact that

we had become stockholders in Interhandel. He also stated that they thought that in order to protect themselves from possible criticism, they should send Mr. Germann over here; that while it would be largely a formal matter, they thought that for the record they should not take a position with respect to giving us a written option until Mr. Germann had come over and then gone back and reported to them.

I argued with him that I didn't see what purpose he could serve in coming to this country. I said: "We have agreed upon a price. Do you figure you could get more money in America for this property? Well, I will tell you right now, Doctor, you can. There isn't any question about that. If you had these shares in your possession today, so that you could sit on one side of a table and pass them
771 across in return for the consideration that was being paid for them, you could get more money for them. You might get much more money for them. So you don't need to go to America to find that out. I can tell you that now. You can make up your mind on whether or not you want to do business with us on the basis I have outlined, but you won't get anybody to stand committed for any protracted period of time to pay you for them. You won't get anybody that will go along and endeavor to give you the help that we are giving you and get more money for them. You don't need to send Mr. Germann to America to find out. What can Mr. Germann find out in America? What is it you want to find out?"

I kept pressing that question, kept pressing it, because I never got a responsive answer except I was asked to have sympathy with their position. And I said: "Well, all I can see that Mr. Germann can do—he has said he would be back by April 15th, and in that short period of time he might get some misleading information." They said, no, he would not get misleading information, because they would instruct Mr. Germann to work intensively with us, and we could see that he was not being misled; we could see whether or not he was getting correct information; that

he would be working in cooperation with us at all times, and they didn't expect that anything would happen as a result of his visit to America that would change the situation
772 as they then saw it, but until Mr. Germann did come over here, they would not come to any conclusion about it.

We had a lot of discussion more or less of the same character we had on March 10th, and finally I reached the conclusion, Your Honor, that we were not going to get the written option and we might just as well go home. So I told them I thought the whole thing was silly; that there wasn't any reason for us sitting around there for three weeks for Mr. Germann to go over and come back, and they said we could return then and that they would come over to us, that it would not be necessary for us to come back. I said, no, our instructions were to bring this to a head or withdraw any further interest in the matter, and I thought the thing for us to do was to withdraw and go home. So I stood up. Everybody else stood up. We started walking out of the room. By "we" I mean Dr. Schiess and Mr. Shorten and myself. There was some excitement about it. They asked us not to withdraw. I told them that we could not stay there any longer without personal reflection on ourselves, and I personally didn't intend to assume responsibility for it; we could go home then with no reflection, no discredit; we were not responsible for the fact that they would not make a deal, but we would be responsible for sitting around there and getting no place, and that we were going home. And we walked out.

773 I went into Mr. Richner's private office as I went through the door, and Mr. Richner and Mr. Wehrli came along, and Mr. Henggler came along, and the meeting started to break up in little groups. The groups kept shifting all the time. Sometimes Mr. Henggler and Mr. Richner were talking, sometimes I was talking to Mr. Shorten and sometimes Mr. Shorten and Mr. Richner were talking together. They just kept milling around in little groups for

about an hour, and I had quite a talk with Mr. Henggler, probably talked to Mr. Henggler for twenty minutes or half an hour in that hour, in which he urged us to stay and not break off relations with the Swiss.

I tried to find out from Mr. Henggler what was going on on the other side, what reason there was why we could not bring some sense into these relations. He said—

Mr. Gordon: I object. Dr. Henggler did not represent our people. The only testimony in the case today—

The Witness: So far as I know, he did.

The Court: You wish to oppose the objection?

Mr. Burroughs: No.

The Court: Objection sustained.

By Mr. Burroughs:

Q. Don't tell us what Dr. Henggler said. Just tell us what happened as a result of your conversation at
774 that meeting. A. At the end of about an hour the meeting got together back in the Board Room again, and I turned to Mr. Iselin, Dr. Iselin, and I told him that I had been informed by Dr. Henggler that if we would go along with what Dr. Iselin had suggested, we could be assured that the Swiss would do business with us, and unless some untoward incident happened, we would get the opinion in writing that we had come after. And I said: "Doctor, as one lawyer to another let me ask you something. If we stay here until Mr. Germann returns, are you prepared to say to me as a brother lawyer that I am not being a chump in staying here during that period? I can go now and I will be all right, but if I sit over here for three weeks or longer and go home then without the option, it will be a reflection on me. Are you willing to assume the responsibility and the assurance, personal assurance to me, that my stay here for that three weeks will result in what I want?" And he said: "I assure you—"

Mr. Gordon: I object to that. Dr. Iselin's personal assurance to him is no assurance of Interhandel.

The Court: Objection overruled.

A. (continuing) "I assure you that it is our intention to do business with Remington Rand. I think you will get what you are seeking if you do what I ask you to do." I said to him, "Doctor, are you willing to give me your
775 word as a gentleman on that?" and he said he would.

So I crossed from the side of the table I was on and went over to his side of the table, and he stood up and shook hands with me, and as he was shaking hands with me he said: "I will go further. I will pledge you we will agree that while Mr. Germann is in the United States he will not negotiate with anybody else."

So I turned to Dr. Sturzenegger, who stood up at that time, and I said: "Doctor, are you willing to give me such assurances?" and he said, "Yes." And we shook hands on it, and then I turned to Mr. Germann, who also was standing on that side of the table, and then we went back to our side of the table and I asked them to confirm their agreement to me in writing, and they said they would do that. They said they would have a Board meeting to consider my renewed request for the written option, and that following that, they would write me the letter. We then agreed that the oral option we had would not be canceled.

Mr. Gordon: I object.

The Court: Now, when you say "we agreed," that is a conclusion. That doesn't state what was said. Objection sustained.

Mr. Gordon: This gentleman is a very distinguished lawyer from New York, if the Court please, and he must know how to testify.

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777 The Witness: They said they would not cancel the option until April 15th, and then upon two weeks notice. I said: "Now, when Mr. Germann gets back are we going to be confronted with a raise in the option price?" They said no, that trading was finished, that the price would stay at $25,000,000, they would not raise it. I said: "Is

that agreed to?" and they said "Yes." We had some further general discussion and the meeting broke up around six o'clock.

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Q. Now, did there come a time when you again met with the representatives of Interhandel?

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780 A. Yes, at a dinner on the evening of March 19th, 1947 in a restaurant in Basle, Switzerland.

Q. Who was present at that meeting? A. There were present Dr. Iselin, Dr. Sturzenegger, Mr. Germann, Mr. Shorten, Dr. Schiess and myself.

781 Q. Was there any discussion had at that time with respect to the matter you had had under consideration? A. Yes, there was.

Q. Tell us just what took place. A. Well, there was a desultory, general discussion during dinner and at the conclusion of the dinner I took out of my pocket Remington Rand Exhibit No. 29, being the revised translation of the letter of Interhandel to us dated March 17, 1947, and I had additional copies of it which I passed around to those present at the dinner. And I said to Dr. Sturzenegger, Dr. Iselin and Mr. Germann:

"You gentlemen possess an advantage that I do not. You not only read, write and speak German, but you read, write and speak English. I can only read, write and speak English."

I said "I want to advise Mr. Rand with absolute accuracy, and because I don't want any confusion in what I am going to say to him that could lead to any future misunderstanding, I had Dr. Schiess translate your letter."

I said, "As it was translated from the German into English, it was rather awkward and I sat down and corrected that translation as I thought it should be to clear up any ambiguities. I would like to go over that letter with you, and I would like to have you gentlemen tell me

whether or not what I am now giving you and am
782 about to read to you accurately states in English what you want to say to Mr. Rand."

I started reading. When I reached that sentence in the second paragraph reading "but we are sorry that the Board reached the opinion that nothing decisive had changed since the basic situation was examined in January of this year."

Mr. Germann interrupted me and he said as I read "but we are sorry", he said "That is not quite correct. It is not strong enough." He said, "We feel very sorry, very very sorry." He said, "It is much stronger than you have put it."

783 So I said, "Doctor, if I insert the word 'very' before 'sorry', will that more accurately express it?"

He said yes, it wasn't strong enough, but that that was more nearly what they were saying by using the word "very".

So then I read that "The board reached the opinion" and he again interrupted me, and said that was too strong, because it gave a dignity to the conclusion they had reached, and that really wasn't the way to put it, that they hadn't reached a decision on it, it wasn't a decisive thing.

And we had some discussion to try to find the word, and finally I said "Well, 'felt',—do you think 'felt' would express it?" He said yes, that was better, because this other was too strong, it was too definite, and they hadn't come to a definite position in the matter.

So I said "All right, let's change it, then", and I scratched that out, the words out "reached the opinion" and I wrote over it in my handwriting "felt". Then I re-read the sentence to them "but we are very sorry that the board felt that nothing decisive has changed since the basic situation was examined in January of this year."

And I continued then with the reading of the rest of the letter, sentence by sentence, and each time asked them whether or not that correctly expressed what they were say-

ing in their letter to us, in English, and they all said it did.

So at the conclusion of the reading of the letter, I said to Doctor Germann: "Doctor, this letter doesn't
784 cover three things that we reached agreement on on March 14th, and I think you should put it in there."

He wanted to know what they were, so I named the three conditions upon which we had reached agreement, namely, price, the option in writing, and that during this interim there would be no negotiations with anyone else.

And Doctor Germann said to me: "Why, that is implicit in our letter. That naturally goes with it." And I said "Well, Doctor, if you don't mind, if it is implicit, I would like to have it made express. Will you write me another letter and put it in", and he said he would.

Then he said to me "Give me those matters again", and he wrote down on this piece of paper the three subjects that I told him had been omitted upon which we had definitely reached agreement.

And that handwriting at the bottom is Germann's handwriting. These markings out here in the handwriting there are mine. I am referring now to the striking out of the words "reached the opinion" and the insertion in lieu thereof of the word "felt", and the insertion of the word "very" in the sentence "but we are very sorry" and so forth.

Q. Now, did you receive such a letter covering the three points that you had discussed at the meeting? A. We did.

Q. Before you get to that, did anything else take
785 place at the dinner meeting on the 19th, that you recall, with respect, of course, to these negotiations? A. Well, there was some general talk, but I would say it was repeating things that we had discussed and said before. We got into a discussion, for instance, about the latter part —let me see that RR Exhibit there, will you?

Q. Which one? A. This one (RR Exhibit 29). We discussed paragraph 1 on page 2.

Mr. Gordon: Of what?

Mr. Burroughs: That is RR—what is the number there?

The Witness: I am referring now to Remington Rand Exhibit No. 29. There was a discussion about whether or not Dr. Germann would be back by April 15th. The date of April 15th I was told was put in there because he would be back on that date, and that that was the way in which they had expressed their agreement, that they would not cancel our option during the period that Dr. Germann was away, and that in this manner Dr. Germann could get back and report to the board, and they could determine as the result of his report whether or not they were going to give us the option in writing, and that until he could come back and they could make up their minds on that, that the option we had would not be cancelled, and then only on 14 days'
786 notice, during which period of time we had the right to exercise the option by making an offer to purchase.

Mr. Gordon: You say Dr. Germann said that?

The Witness: Well, no, I didn't say that.

Mr. Gordon: What did you say? Let's get that.

The Witness: I said they said, Mr. Gordon, because I don't recall which one specifically said it.

Mr. Gordon: Read the question, or the latter part of the answer.

(The latter part of the answer was read, as follows: "and that in this manner Dr. Germann could get back and report to the board, and they could determine as the result of his report whether or not they were going to give us the option in writing, and that until he could come back and they could make up their minds on that, that the option we had would not be cancelled, and then only on 14 days' notice, during which period of time we had the right to exercise the option by making an offer to purchase.")

Mr. Gordon: That is what they said?

The Witness: That is what they said.

Mr. Gordon: I move to strike that out as being too indefinite, if the Court please.

The Court: Can you be more specific ac to who made that statement to you?

787 The Witness: I couldn't, Your Honor. It was a general conversation. It wasn't—sometimes one person would be in it, and sometimes another.

The Court: That is your whole case, Mr. Garey.

The Witness: That may be unfortunate, that my memory will not permit me to say Doctor Sturzenegger said something, Your Honor, or that Mr. Germann said it, or Mr. Iselin. It was said in the meeting. I haven't got a memory that is too poor, but it is not that good.

The Court: The motion is overruled, but, of course, the fact that he cannot remember precisely who made the statement goes to the weight of his testimony.

The Witness: It was one of the three people representing Interhandel,—might have been a combination of them.

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791 Cross examination

By Mr. Gordon:

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792 Q. Now, is it a fact that you stated to Attorney General Clark that you had an option,—that Remington Rand had an option with Interhandel to buy the General Aniline and Film stock? A. I stated to either one or the other, or both.

Q. That that was so? A. Yes.

793 Q. When did you state that to them? A. In December, or January. I should say at least December of 1946, or January of 1947, probably in December, because that was about the time, immediately after that, that I drafted the option in writing—proposed option in writing.

Q. You told him you had an option similar to the one that you put in writing and took over with you, this Remington Rand Exhibit 52? A. I didn't say any such thing, because at the time I had that discussion that writing had not been prepared.

Q. All right. When did you tell them that the option had been obtained? A. I wasn't asked, and I didn't say.

Q. Well, when, in fact, did the events happen from which you concluded that Remington Rand had an option with Interhandel to which you referred when you spoke to the Attorney General or the Assistant Attorney General? A. Beginning in June of 1947, and subsequent thereto.

The Court: 1946.

The Witness: 1946.

Q. (By Mr. Gordon) 1946? A. Yes, sir.

Q. Well, did you consider that you had the option in June? A. I certainly did.

794 Q. Nothing happened between June and December to change the situation, did it? A. Yes.

Q. Except extensions? A. Which were in effect a renewal of the option.

Q. Then when you stated to the Attorney General or the Assistant Attorney General, and you did so state according to your testimony as I understand it, that Remington Rand had an option with Interhandel to purchase the General Aniline and Film stock, you were referring to an agreement that you contend was made in June, 1946. Is that right, or isn't it? A. That is substantially correct.

Q. And after that, nothing further happened from your point of view to change the situation until these events in Switzerland that you have described in March. Is that right? A. As far as my knowledge of the matter goes, yes.

* * * * * * * * * *

801 Q. Let's get that straight first. Do you want to correct what I have said? A. I explained to you that I was told that Mr. Germann would be back by April 15th. When it was first suggested that Mr. Germann was coming to America, I pointed out that under the existing option we then had, it was subject to cancellation in two weeks.

The suggestion was made by Mr. Sturzenegger in the March 14th meeting that during the time Mr. Germann was gone in America, they would not cancel the option, and so the date of April 15th was put in there, to provide that

the option during that period was non-cancellable, and that after April 15th if they saw fit they could then cancel the option upon two weeks' notice, during which period of time I said we could then make an offer to purchase. Now, that was my testimony.

Now, in view of that testimony, what is it you want to ask me with respect to it?

Q. Well, in view of the fact, as pointed out to you by the Judge, that that is the essential point in this case, I am asking you, breaking an invariable rule of mine, why you didn't ask to have that put in the letter? A. I think it is in there.

Q. All right. You mean in the letter of March 17th? A. Yes.

Q. All right. Let's have it. A. "That we are pre-
802 pared to extend the gentlemen's agreement which exists between us definitely in such a way that it will be only cancellable again after 14 days from the date of April 15, 1947."

Q. And you were satisfied with that? A. I was satisfied with it, yes. It was an interim situation at that time. We confidently expected to get the option in a definitive form in writing. My own judgment at that particular time was that that was as far as we could go until Germann came to America and returned.

Q. That was all they would give you at that time? A. That was my judgment, that they could make no further progress until Mr. Germann came over here and returned.

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805 Redirect examination

By Mr. Burroughs:

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807 A. Well, I started to tell you about that this morn-
ing. I complained about the fact that we were working against a two week deadline, and I asked Doctor Sturzenegger why he would be unwilling to marry Remington Rand and prolong that.

I said "You know, Doctor, what you are trying to do here all the time is to get Remington Rand committed", and he said "Well, that is right." He said "We are committed. We want Remington Rand committed".

And I said "Well, no responsible organization is going to commit themselves without day and without any conditions to protect them and stand indefinitely committed without knowing when or under what circumstances they are
808 ever going to get this stock and that is what your June 6th agreement contemplates."

And he said "That is right. We want Remington Rand committed."

"Well," I said, "Remington Rand won't be so foolish, Doctor. We won't stand committed. We want an option." I said "No responsible person who is worth 25 million dollars is going to stand committed, and for an amount of cash committed definitely, not knowing when and under what circumstances they will have to meet that obligation, and we will not commit ourselves."

* * * * * * * * * *

820 **"Roy Archibald,** of legal age, lawyer, residing at 48bis, rue de Monceau, Paris, being duly sworn and examined on behalf of the Intervenor, did depose and say as follows:

Direct examination by Mr. Sterck

Q1. Will you please state your full name? A. Roy Miles Archibald.

Q2. Where do you live, Mr. Archibald? A. In Paris, at 48bis rue de Monceau.

821 Q3 What is your occupation? A. I am a lawyer.

* * * * * * * * * *

832 A. At a meeting which I had in July 1948—

Q71 Will you place the date? A. July 22nd or 23rd, at the offices of Dr. Schiess, of Basle, at which were present Dr. Sturtzenegger, Dr. Germann, Dr. Wehrli, Dr.

Schiess and myself,—Dr. Sturtzenegger and Dr. Germann both confirmed that they had had a meeting with Mr. Richner and Dr. Wehrli on June 6th, 1946 at which they had declared to them Interhandel's willingness to sell their participation in G.A.F. under certain conditions.

Q72. Did those gentlemen of Interhandel at that meeting in Dr. Schiess' office on the date mentioned, state to you what those conditions were? A. Yes.

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"A. In order to clarify those conditions it was necessary to state them. They were stated by the gentlemen of Interhandel as follows: Interhandel declares its willingness to accept, provided the offer is put forward by the Union Bank of Switzerland on behalf of one of the groups represented by the Union Bank of Switzerland and provided also that the offer shall contain an undertaking to pay 25 million dollars, or its equivalent in gold, in Basle, the return of approximately 85,000 shares of Interhandel, the return of approximately two million dollars representing dividends, I believe, and finally the elimination from the Proclaimed List of any and all the members of Interhandel. We thereupon conferred, in order to clarify some of the above points, who were the people to be considered as members of Interhandel, how many shares there were, and so forth.

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Q74. As I understand your answer then, the meeting in Dr. Schiess' office was for the purpose of clarifying a statement previously made by the representatives of Interhandel, to Mr. Richner; and the representatives of Interhandel, specifically Dr. Germann and Dr. Sturtzenegger, agreed to come to Dr. Schiess' office for that purpose? Do you know that of your own knowledge? A. Yes, I do.

Q75. At the meeting in Dr. Schiess' office on July 23rd, there must have been many subjects discussed,—I take it it was a long conference. Can you tell me how long it took?"

Mr. Gordon: Mr. Carmody objects.

834 Mr. Burroughs: It is changed, Mr. Gordon, in the next question.

Mr. Gordon: All right. Beg pardon.

"Q75. (Continued) I will merely ask you how long did the meeting last? A. A long time.

Q76. One hour? A. At least two and a half hours.

Q77. Will you tell us the topics of conversation? A. The first question that was raised was the question of purchasing the preferred shares of Interhandel. We suggested,—or I suggested to the representatives of Interhandel that they should grant to my principals an option for the purchase of the preferred shares of Interhandel.

Q78. Is that all that was said about that subject, or do you remember anything else that was said about that subject? A. The representatives of Interhandel refused to discuss the matter of an option on the preferred shares of Interhandel because they said that if they were to grant us such an option on the preferred shares of Interhandel it would be detrimental to the efforts that we, Remington Rand, were making to take up the option that had already been granted for the purchase of G.A.F. They therefore felt that they would be in a better position to realize the sale of G.A.F., on which they stated they were keen if
835 they did not grant us also an option on Interhandel.

They made it quite clear that they had granted an option for the purchase of G.A.F. and they were keen that it should be consummated."

* * * * * * * * * *

"Q79. The last statement will be re-read by the reporter at my request. Will you tell us, if you can, if that is the case, whether one of the gentlemen from Interhandel said that, and if so, if you can remember which one. If you cannot remember specifically which one, can you absolutely and definitely state that one of the two gentlemen from
836 Interhandel said it?

* * * * * * * * * *

"A. Dr. Sturtzenegger made a statement to us to the effect that he could not even negotiate with regard to an option for the purchase of the preferred shares of Inter-
837 handel because he was very keen that we should consummate or take up the option we already had, namely, for the purchase of G.A.F.

Q80. Do you remember anything else which these gentlemen from Interhandel—Dr. Sturtzenegger and Mr. Walter Germann—said to you or to your group at that conference in Dr. Schiess' office on July 23rd, 1946 with reference to the purchase of the preferred stock of I. G. Chemie? A. We also suggested to them that we should draft an option for the purchase of these shares and place the option in escrow, so that if it became necessary at a later date we would not have to start negotiations on that score again and would not have to do any further drafting.

Q81. Do you remember anything else? A. They stated that they were not willing to draft such an option at that time for the reason stated above.

Q82. Do you remember anything else? A. May I refresh my memory from my records?

Q83. If your memory will be refreshed by referring to a memorandum you made on that date, you may. A. I made a memorandum on that day and I think I have it with me.

Q84. Then you may."

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866 "R16 Will you now refresh your recollection by reading that memorandum? A. (Witness reads document)

RDQ17. Now, what can you tell us, if anything, beyond what you have stated this morning with regard to what the gentlemen of Interhandel said to you, to your own knowledge, at that conference on July 23rd, 1946 with reference to this matter? A. After reading this memorandum, it is now perfectly clear to me that we were trying to persuade the gentlemen of Interhandel to do several things."

"RDQ18. What can you tell us, if anything, beyond what you stated this morning with regard to what the gentlemen

of Interhandel said to you, to your own knowledge, at that conference on July 23rd, 1946 with reference to this matter? A. The gentlemen of Interhandel stated to us, that is Dr. Schiess and myself, that they were not willing to negotiate or sign an option on the preferred shares. They further stated that they were not willing to commit themselves in writing to the option they had already granted, and they explained to us that their unwillingness in this respect was not to be construed as an unwillingness to agree that the option existed, but was to be construed in the following light: They wished the declaration of willingness to accept
867 an offer to remain an oral declaration, because they wished to present the matter to their shareholders when the time came as an offer from someone else to purchase G.A.F. stock and not as something that they had already given away.

RDQ19. Let me ask you a question, Mr. Archibald, right there,—this is very important: Can you now recall and testify as to whether Dr. Sturtzenegger said that, or Mr. Walter Germann, or is it only in your mind that one of the two said it? I ask you to think very carefully and call back to your mind if you can which of the gentlemen of Interhandle said that, because it is important. A. There is no doubt in my mind,—Dr. Sturtzenegger was the man who made the statement.

RDQ20. You are sure of it, Mr. Archibald? A. I am perfectly certain.

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869 A. There were many topics; the first one with regard to the purchase of the preferred shares of Interhandel, but we also discussed the details of the execution of our option if it were carried out.

RDQ36. What did the gentlemen from Interhandel say to you about that and what did you say to them, if anything, about the details and the execution of the option which you say, and we allege we had at that time? A. They stated to us that they could not improve on their declaration made to Mr. Richner on June 6th.

RDQ37. Was your word 'improve'? A. My word was 'improve' . . . wherein they had expressed the willingness of themselves to accept an offer provided certain conditions were fulfilled. We point out to them that the . . . .

RDQ38. To them,—to the gentlemen of Interhandel? A. To the gentlemen of Interhandel.

870 RDQ39. Dr. Sturtzenegger and Mr. Germann? A. They were the only persons present.

RDQ40. That we could not within the time limit set in the declaration carry out all of the conditions stipulated, and they agreed with us that all that we had to do within the time limit was to bind ourselves to carry out these conditions at a future date."

Mr. Gordon: I move to strike that answer as a conclusion on the part of the witness.

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872 The Court: Well, the objection has been raised, and having been raised, whether it is highly technical or not, I will sustain the objection—sustain the motion to strike that part of the answer beginning with the words "and they agreed," and ending with the words "future date," as not responsive and as a conclusion.

* * * * * * * * * *

878 "RDQ57. Therefore I want you to answer the question which I asked you previously and which I reserved: What did the gentlemen of Interhandel say to you on July 19th or on July 23rd concerning the conditions that you see in Exhibit No. 47? A. They expressed the earnest hope that we might be in a position to carry out our undertakings after we had accepted the terms of their offer, and they asked us what assurances we could give them that we would be in a position to do so.

RDQ58. Did you tell them about any assurances, did you give them any assurances? A. We told them it would take more time than they seemed to anticipate.

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884 "RDQ77. Did the gentlemen of Interhandel say anything further than what you have now merely re-

peated they said? What else did they say about the declaration to you on that date?"

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"A. The gentlemen of Interhandel also stated to us that they were not prepared to put the declaration that they had made to Mr. Richner on June 6th in writing, because they wished to present the matter to their shareholders in such a way that it would appear that a third party was making an offer to Interhandel which they would, of course, accept,
instead of making it appear that they had given away
885 or sold the company's assets. They confirmed, however, that if an offer was made to them according to the conditions stipulated to Mr. Richner, that offer would be accepted."

* * * * * * * * * *

911 XQ273. I ask you if, as a result of this meeting, Interhandel had stated these conditions more precisely as conditions which must be fulfilled before they would ever negotiate with respect to the G.A.F. shares,—is that right? A. No, not 'negotiate'.

XQ274. You said 'not negotiate', is that your answer? A. I said not 'negotiate',—they were not conditions to be fulfilled before they would negotiate.

XQ275. What is your explanation? A. He wanted to clarify what were the conditions which they wished to attach to the acceptance that we must make of their offer.

XQ276. And these were the conditions that are contained in this recapitulation, that they attached? Can you answer yes or no?

XQ277. I invite your attention to the wording: 'As essential condition for the acceptance of such an offer
912 it is provided that all discrimination against Interhandel, against all the members of its Board of Directors, against a member of its management, against the preferred shareholders, i.e., Industriebank A. G., Basle and Societe Auxiliare de Participations et de Depots S.A., Lausanne and against all members of their Boards of Directors,

as well as against all persons or companies who have been discriminated against because of their relation to the Interhandel group, must cease completely'. I ask you if that wasn't one of the conditions for the acceptance of any offer that Remington Rand might care to make. A. That was not a condition of the acceptance of the offer.

XQ278. Then why did you write in this recapitulation . . . which, incidentally, you and Dr. Schiess prepared, didn't you? A. That is correct.

XQ279. If that was not one of the conditions, why did you write it down? A. That was one of the conditions of the deal going through, but it was not a condition of our acceptance of their offer.

XQ280. The subject of this discrimination was discussed? A. Yes, it was.

XQ281. And your testimony now is that Interhan-
913 del took the position that before they would accept any offer that Remington Rand might make, these conditions must all be fulfilled, is that true?"

Mr. Burroughs: That is not his testimony.

"A. My testimony is that before the deal could go through, these conditions had to be fulfilled. In other words, we had to bind ourselves to pay a certain sum of money, return certain shares, and also it had to be perfectly clear and certain that the discriminations cease.

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928 "RDQ95. Mr. Archibald, you testified that the gentlemen of Interhandel did not agree to give you an option on the preferred shares of their own stock, is that correct? A. That is correct.

RDQ96. Did the gentlemen of Interhandel tell you why they would not? A. Yes, they did. They stated—

A. (Continued) The gentlemen of Interhandel told me that they would not grant us an option on the preferred because they wished us to make every effort to carry out or exercise the oral option already granted in their declaration to Mr. Richner of June 6th; and they stated that if they were

929 to negotiate at all with regard to the preferred, it it might impair our efforts with regard to the G.A.F. option already granted.

RDQ97. You testified in answer to the cross-examination that the gentlemen of Interhandel refused and told you they would not give you a written option on the Interhandel participation in G.A.F. at the meeting of July 19th and possibly at the meeting of July 23rd. Did the gentlemen of Interhandel tell you, and if so, which of the gentlemen told you why they would not give you a written option?"

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"A. Yes, Mr. Sturtzenegger stated to me that if they were to give us a written option instead of the verbal declaration we already had, it would appear to third parties and their shareholders that they had sold part of the company's assets, whereas they wished it to appear to these people that an offer was being made by someone else, which they could then carry out. The reason can be summed up in one word,— "window dressing".

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931 "RDQ101. What do you mean by 'before the deal
932 could go through', will you explain that?"

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"A. I mean that when we accepted the offer we had to bind ourselves to carry out the conditions of the declaration of June 6th at some time in the future.

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988 "Q1. Will you state your name, Sir? "A. Richner.

"Q2. Your full name, please? "A. Felix Richner.

"Q3. What is your occupation, Mr. Richner? "A. General Manager of the Union Bank of Switzerland.

"Q4. This is the bank which in this case is familiarly known as the S. B. G. at times? "A. S. B. G., yes, or U. B. S.

"Q5. How long have you been with the Union Bank of Switzerland? "A. Thirty-two years.

"Q6. And you have been a general manager of that
989 bank since when? "A. Since 1940, and a member of the Management for twenty years.

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"Q15. Mr. Richner, did there come a time in 1946 when you conferred with representatives of Interhandel?
990 "A. Yes.

"Q16. Did you meet again on June 6, 1946 concerning the sale, the possible sale of the G.A.F. participation of Interhandel? "A. Yes.

"Q17. Will you tell us where you met and whom you met? "A. In Basle, in the house of the Interhandel.

"Q18. In the office? You mean the office? "A. In the office of the Interhandel.

"Q19. Who was there? "A. Dr. Iselin, Mr. Sturtzenegger, Mr. Germann's father and Mr. Germann too.

"Q20. Mr. Richner, can you recall in general what was said by the gentlemen on both sides at that meeting on June 6, 1946?"

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991 "Q20. Mr. Richner, can you recall in general what was said by the gentlemen on both sides at that meeting on June 6, 1946? "A. Yes. On that date we recapitulated the conversations we had before on the agreement we made.

"Q21. Did you instruct your assistant, Dr. Wehrli, to make a memorandum of the conversation at that meeting?

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"A. Yes, I did.

"Q22. Is it your usual business practice to instruct
992 your assistants, when they are with you at a conference, to make memoranda of that conference and present it to you?"

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"A. Always.

"Q23. Mr. Richner, I show you R. R. Exhibit No. 1—Deposition of Dr. Ulrich Wehrli, which Dr. Wehrli has testified is the memorandum he prepared following the meet-

993 ing of June 6, 1946 and I ask you whether you know and can testify that this is the memorandum which was shown to you and approved by you?"

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994 Mr. Burroughs: No, the answer says: "That is the memorandum I ordered.

"Q24. Mr. Richner, can you testify that this memorandum, —R. R. Exhibit No. 1—Deposition of Dr. Wehrli—is an accurate and, to the very best of your recollection, a true statement of what was said to you and to Dr. Wehrli by the representatives of Interhandel at the conference on June 6, 1946?"

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1005 A. Yes.

Q25. You are sure of that, Mr. Richner? A. Yes.

Q26. Mr. Richner, I call your attention to the words 'einer von ihr vertreten Gruppe' in the first paragraph of R. R. Exhibit No. 1; the English translation thereof is 'a group represented by it' ('it' referring to S. B. G. or the Union Bank),—do you see that, Mr. Richner? A. Yes."

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1006 "Q29. What was your understanding of who the
1007 group was that the bank represented?"

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A. There was a group headed by Remington Rand."

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1015 Mr. Burroughs: If Your Honor please, at this time I will offer in evidence what was marked for identification as Remington Rand Exhibit No. 1, deposition of Dr. Ulrich Wehrli, which is the purported memorandum of the conversation which took place on June 6, 1946,
1016 in Germany.

Mr. Hiss: I object, Your Honor, for the reasons set forth by Mr. Carmody. I will repeat them if you want me to.

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936 "**Dr. Ulrich Wehrli**, aged 35 years, an official of the Union Bank of Switzerland, residing at Zurich, Swit-

zerland, being duly and publicly sworn and examined on the part of the Intervenor, did depose and says as follows: "

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939 Q22. Dr. Wehrli, how long have you been employed by the Union Bank of Switzerland? A. Seven or eight years.

Q23. You know Mr. F. Richner, of course? A. Of course; he was my immediate superior until—January 1st of this year.

Q24. Will you tell us what position he occupied during the time that you were his assistant? A. He was, and still is now General Manager of the Union Bank of Switzerland.

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942 Q49. Now, Dr. Wehrli, did there come a time in 1946 when you conferred with representatives of Interhandel regarding the possibility of Interhandel selling their G. A. F. participation? • • • • A. I say yes.

Q50. Did you have many such conferences? A.
943 Many.

Q51. Where were most of those conferences held with the representatives of Interhandel regarding the G. A. F. participation? A. Either in Basle at the office of Interhandel, or in Zurich in the Union Bank.

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Q54. Dr. Wehrli, did you meet again with the representatives of Interhandel on June 6, 1946?

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944 "Q55. Where did you meet and who was present from the Union Bank and from Interhandel? A. From the Union Bank Mr. Richner and I, and from Interhandel Mr. Iselin, Mr. Germann senior, Mr. Germann junior and Mr. Sturtzenegger.

Q56. Did you say where you met? A. We met in the office of Interhandel in Basle.

Q57. Do you recall in a general way what was said by each of the gentlemen present on that occasion? • • • A. I recall in general—

Q58. Wait a minute before you answer. I am going to rephrase the question: What, in general, was said by the gentlemen of Interhandel to you on that occasion, if you can recall? "

• • • • • • • • • • •

"A. The statement made by the gentlemen of Interhandel referred to the sale of the G.A.F. participation and was fixed by myself and Mr. Richner, based on the notes I made during the meeting and after the meeting. I fixed it after the meeting. • • • •

945 Q59. Do you recall in general what was said by each of the gentlemen present on June 6, 1946 at the office of Interhandel? "

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946 "A. Yes, in general, but I can't remember which part was said by Mr. Iselin or by Mr. Germann or by Mr. Sturtzenegger.

Q60. But you did make a memorandum as you have testified? A. Yes.

Q61. And you made notes at the meeting? A. Yes.

Q62. Dr. Wehrli, have you those notes that you made at the meeting? A. No.

Q63. Dr. Wehrli, have you the original—the original of your memorandum? A. Yes.

Q64. The original of your memorandum of the con-
947 ference of June 6, 1946? A. Yes.

Q65. At the Interhandel. Will you produce it?"

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"Q66. Dr. Wehrli, without looking at the memorandum, can you tell us almost five years later what occurred at this meeting and what these gentlemen stated and what you stated to the gentlemen of Interhandel without looking at that memorandum and without refreshing your recollection?"

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948 "A. On that day—

Q67. Just a moment; the question can be answered yes or no: Can you, without looking at that memorandum state what happened at that conference, or would looking at that memorandum refresh your recollection sufficiently for you to give us an accurate testimony of what was said by each of the parties at that meeting? Do you understand my question? A. I hope so. I say in general, but I cannot in detail.

Q68. I want the witness to produce the original memorandum of June 6, 1946 prepared by Dr. Wehrli, purporting to be a conference between Dr. Iselin, Mr. August Germann, Dr. Sturtzenegger and Mr. Walter Germann, of Interhandel, and General Manager Richner of the Union Bank, and the gentlemen now testifying. Will you please produce the original of that memorandum?"

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950 "XQ1. Dr. Wehrli, at the time of this alleged conference you were representing Remington Rand, were you not? A. Yes.

XQ2. When I say "you", I mean, of course, you, Dr. Wehrli, and the Union Bank were representing Remington Rand? A. Yes, the Union Bank and myself.

XQ3. And do you have any recollection of when you met on that day? A. In the afternoon.

XQ4. Can you fix the time with any more certainty? A. No.

XQ5. Was it after lunch? A. Yes.

XQ6. And your luncheon is from twelve to two,
951 isn't it customarily? A. Yes.

XQ7. So it was some time after two o'clock. A. I think so.

XQ8. Now, how long did the conference last? A. About an hour.

XQ9. And were you present throughout the entire time? A. Yes.

XQ10. Was Mr. Richner present throughout the conference? A. We were both present during the same time.

XQ11. And you say you made notes? A. Yes.

XQ12. Did you make them in shorthand or in longhand?"

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"A. Partly, partly. I did not need to make so many notes because I knew the principles of that statement before.

952 XQ13. My question is, did you make some notes? A. To my recollection, yes.

XQ14. And have you answered my question as to whether they were in shorthand or longhand? A. I said I presumed they were partly-partly,—"teilweise".

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XQ20. Doctor, can you state now that the notes
953 that you made during and after the meeting were in fact destroyed? A. Yes.

XQ21. Did you destroy them? A. Yes.

XQ22. But I understood you to say that for some of the minor conferences you still have your notes available? A. I repeat that when immediately after the conference I had no girl available to dictate the notes to, instead of making a dictated note out of my handwritten notes, I kept the original handwritten notes because otherwise, if I had destroyed these notes I would have had nothing in hand from those meetings.

XQ23. I understood you to say, Doctor, that you made notes during the meeting and after the meeting? A. Yes.

XQ24. And by this you meant that you made some of the notes while you were present at the Interhandel office and made some of them after you had gone back to your own office, is that true? A. What do you mean by notes?

XQ25. Memoranda,—notes or memoranda based on the discussion. A. Yes, and then I made this memorandum.

XQ26. But the notes on which this memorandum was based, some of these notes were made during the
954 meeting in Interhandel's office and some were made after you had gone back to your own office, isn't that

true? A. Some points, or better, practically all points were discussed already before the meeting, so I made already notes before, and then I put the notes together after the meeting.

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957 XQ41. But Doctor, as I understand your testimony, when you came to the conference of June 6 you did not have to make numerous notes on that occasion because you had discussed various aspects of the meeting at these previous conferences and had them in your mind? Is that right? A. Yes.

XQ42. And those conferences, as you pointed out, went back to April 1946? A. The specific discussion went back to April, I don't know exactly when the first meeting was with Mr. Richner and with members of Interhandel; but these specific points that are in this note and that were the subject of the statement of June 6th were only in this way discussed a few days before.

XQ43. You wouldn't say that about all of the notes, would you? Some of them had been discussed a month or so before, isn't that a fact? A. The question of the sale was discussed since weeks before, and the price which had to be paid was also discussed during several weeks.

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958 XQ46. And did you go there by automobile? A. Sometimes we went by automobile and sometimes by train, so I don't know.

XQ47. And don't have any independent recollection now? A. No.

XQ48. Did you leave Basle on that day or stay a few days? A. No, we left on that day.

XQ49. And did you go to your home or to the office? A. I don't know.

XQ50. When did you dictate the memorandum to
959 your secretary—was it a few days later? A. I think it was the next day.

XQ51. You say you think it was; have you any definite, positive recollection of that, Doctor? A. No.

XQ52. It could have been maybe a couple of days later, could it not? A. No.

XQ53. It could not have been? A. It could be that I redrafted it first in hand writing on the following day, but not a couple of days later.

XQ54. And you have an independent recollection that you did redraft it in handwriting on the following day, namely, June 7th? A. Usually I do all letters and important texts with a first draft in handwriting and then dictate.

XQ55. Do you have any recollection outside of your usual practice? Do you have any recollection that insofar as this particular memorandum is concerned that you first wrote it out in hand writing on the following day, namely, June 7th? A. No.

XQ56. And if you did, would you have that draft of the hand writing? A. It may be possible that I have such
960 a draft because I kept certain drafts in hand writing or in typewriting which I made.

XQ57. But you have no recollection that you, in fact, first wrote this out in handwriting, as I understand your testimony? Is that correct? A. No, I have no precise recollection of sitting at the desk and writing it out.

XQ58. And you have no recollection as to whether or not you dictated it on the eighth instead of the seventh? A. No.

XQ59. And did you dictate this at the request of your superior, Mr. Richner? A. Yes.

XQ60. And it was for your own individual purposes, your personal records, so that you would remember what had happened—is that right? A. No, it was an important document.

XQ61. And you wanted to have a recollection of what had transpired, is that true? A. What do you mean by 'transpired'?

XQ62. What had happened. "A. I wanted to be
961 precisely sure what was said on that date in order to communicate it to the Remington Rand group.

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963 Mr. Gordon: Then Mr. Carmody makes an objection, which I renew. Mr. Carmody says:

"I object to the witness referring to this document for the following reasons: First of all, it is an ex parte hearsay statement; secondly, it is not a record kept in the regular course of business; thirdly, it is not a contemporaneous narrative of what transpired, but it clearly shows that it is a narrative of a past event, the witness having testified that this paper represented a recapitulation of conferences extending over a period of some two months. I object to it on those grounds and on the further ground that it is immaterial and irrelevant and that the witness has already testified that his recollection does not need refreshing.

"By the witness: I never said it was my recollection of two months.

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965 "Q71. I show you Exhibit No. 7, the letter from Dr. Iselin and Mr. Germann of Interhandel to Mr. Richner, of March 17, 1947. Have you ever seen this before? A. Yes.

Q72. I wish that you would read this letter, if you will, and I am going to direct your attention to certain parts of it. A. (After reading the letter) I have read it.

Q73. I direct your attention to the first full para-
966 graph on page 2 and particularly to the words 'Der Remington-Gruppe.'' I wish that you would read the entire sentence so as not to take the words out of their context. Do you know what I mean by that? A. Yes.

Q74. But I want you to tell me what the meaning of the word 'Gruppe' as used in that phrase is.''

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"A. In the conversation between Mr. Richner and—

Q75. No. That was not my question. Can you tell me what is meant by the phrase: 'der Remington-Gruppe'? If some said it to you or if as you see it in
967 this letter on Exhibit 7, what would that mean to you, Doctor? Certainly you understand German. A. I say that in the conversations and negotiations we spoke of 'Remington Gruppe' in the sense of Remington Rand Inc. and the affiliated companies.

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970 "Q90. In the memorandum of June 6, 1946, which has been marked for identification as Remington Rand Exhibit No. 1—Deposition of Dr. Wehrli—there are a number of conditions mentioned in the second full paragraph of that memorandum, more clearly identified as A, B, C and D. Do you recall those conditions in that memorandum? You can answer that Yes or No. A. Yes.

Q91. Do you also recall that when you wrote this memorandum, as you testified you did yesterday, you made certain statements therein as to the time limits within which certain things had to be done? • • • • A. There are certain time limits in this statement.

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972 "Did you discuss with the representatives of Interhandel at that conference the possibility of fulfilling those conditions in that time? (Q. translated.) A. I don't know.

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985 XQ79. When the word 'Gruppe' is used, can it have a meaning of referring to individuals? • • •

(No answer)

"XQ80. Is it capable of having a meaning of re-
986 ferring to individuals? Maybe that makes the English easier. A. I remember that with the Boy Scouts they talked about 'Gruppen' in the sense of the smallest unit in their organization.

XQ81. Does it then refer to the individual boy scouts as so used? A. No, it is a unit.

XQ82. Is it your testimony that the word cannot be used with reference to individuals? A. I am no linguist and I cannot testify about all the meanings of the word 'Gruppe'.

XQ83. Do you deny, Dr. Wehrli, that the word 'Gruppe' can be used with reference to individuals? • • • A. I can't answer that question without having a German dictionary or the Swiss Idiotikom at hand."

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1130 **Edmund Wehrli** was called as a witness for and on behalf of the Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Gordon:

Q. Will you state your full name, Dr. Wehrli? A. Wehrli —W-e-h-r-l-i (spells).

1131 That is pronounced *V*ehrli, is it not? A. Yes, sir.

Q. And where were you born?

Mr. Burroughs: Mr. Gordon, may I interrupt a second? You asked him for his full name.

Q. (By Mr. Gordon) What is your full name? A. Wehrli —E-d-m-u-n-d (Spells) Wehrli.

Q. When were you born, Dr. Wehrli? A. 1904.

Q. So you are approximately 46 years old? A. Yes.

Q. And are you a citizen of Switzerland? A. Yes, sir.

Q. Were you born in Switzerland? A. Yes, sir.

Q. Will you tell the Court in your own way something about your legal education and training? A. Of myself? My legal education?

Q. Yes, sir. A. I studied law at the University of Zurich. I passed my examination as a lawyer—as a Doctor of Law in 1927, from the University of Zurich. I was for more than a year Auditor and Secretary of the District Court of Zurich. I passed my examination as a lawyer in 1929 and

since this time I am a practicing lawyer in Zurich.

1132 Q. So you have been a practicing lawyer in Zurich for over twenty years? A. Yes.

Q. Continuously? A. Yes.

Q. And, for the sake of the record, Zurich is in Switzerland? A. Yes, sir.

Q. Are you a member of a firm of lawyers? A. I beg your pardon. I did not get the question.

Q. Do you have any partners or associates? A. Yes. We are several partners, and I am the senior partner.

Q. Will you tell the Court what type of law you practice? A. I would say all types. Private law, law of contract, corporation law, public law, tax questions, clearing, blocking, criminal law.

The Court: What kind?

The Witness: Criminal law.

Mr. Burroughs: Did you say blocking?

The Witness: Yes, questions about blocking, based on the federal decrees concerning blocking of German assets in Switzerland.

By Mr. Gordon:

Q. That has to do with the Swiss Compensation

1133 Office. Is that right? A. Yes.

Q. Have you acted as lawyer for Interhandel in these negotiations which culminated in this case? A. I would say not exactly for this case as it is here before the Court, but I was the lawyer for Interhandel in the matter against the Swiss Compensation Office concerning the blocking of Interhandel, before the special court, based on the Agreement of Washington. That is part of the Supreme Federal Court.

Q. That is, you took no part in the negotiations between Interhandel and the representatives of Remington Rand that had to do with the so-called gentlemen's agreement, did you? A. No.

Q. But you have represented Interhandel in connection with its dealings with the Swiss Compensation Office having to do with the blocking of the Interhandel assets. Is that correct? A. That is correct.

Q. They came to you for that special purpose. Is that right? A. That is right.

Q. And you have also acted as lawyer for them on other incidental occasions, such as revising their by-laws, have you not? A. Yes. That is correct.

1134 Have you any interest in the outcome of this case? A. Interest? You ask if I have—

Q. Yes. A. No, sir.

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1135 Q. Either one? A. Yes, sir.

Q. Can you refer to an Article in the Code of Swiss Obligations that covers the point that you just talked about? Would it be Article 7? A. About the—

Q. About an offer being— A. That is Article 1.

Q. Article 1? A. Yes.

1136 Q. Now, here is a translation of the Code,—

Mr. Gordon: I show this to Dr. Schiess. This is a recognized translation, is it not?

Dr. Schiess: Yes.

By Mr. Gordon:

Q. Will you read that Article in English to the Court? A. "A contract requires the mutual agreement of the parties. This agreement may be either express or implied."

Q. Is that all? A. That is all.

Q. How do you interpret a contract in Swiss law? A. There is a special Article in the Swiss Code of Obligations with the rules concerning the interpretation. That is Article 18.

Q. Will you be kind enough to read that? A. Article 18: "When interpreting the form and the contents of a contract, the mutually agreed real intention of the parties must be considered, and no incorrect terms or expressions used by

the parties by mistake or in order to conceal the true nature of the contract."

Q. In your opinion— A. Paragraph—sorry—there is a second paragraph:

"The debtor cannot plead the defense of a transaction being fictitious against a third person who has ac-
1137 quired the claim on the faith of a written acknowledgment of the debt." That is all.

Q. What is your opinion as to the meaning of the words "incorrect terms or expressions" in that section? A. I think the term must be, or the expression must be clearly erroneous.

Q. Can you give us any examples of that? A. For instance, if there is a mistake in speaking, an error in speaking, or if you make use of an expression which is erroneous, and then you must look at the person who is speaking. I would say if a person is speaking about air lines, or a girl about machine guns, then it is probable, or more probable that they are erroneous. But if a lawyer is speaking, or a man of a bank—a manager of a bank—or a doctor of law is speaking in legal terms, like "offer", like "accept", like "contract," "agreement", "gentlemen's agreement" and all this, then it is rather improbable—may I ask? (speaks with interpreters)—improbably that there is a mistake.

Q. Is it possible under the Swiss law to conclude—well, to prevent an offer from being legally binding? A. Yes. That is possible. If the offeror, the man who makes the offer, says that he will not be legally bound, or if, when a reservation is evident from the surrounding circumstances or from the nature of the whole dealing.

1138 Q. Or from the language used? A. Or from the language used, yes.

Q. Can you give us the article of the Swiss Code of Obligations in which you find authority for this last statement? A. That is Article 7.

Q. If you show it to me I will read the English translation of it—you might as well read it. I may get you mixed up. A. "The offeror is not bound where he adds to the offer a declaration declining liability, or where some reservation results from the nature of the transaction or the circumstances.

"The dispatch of tariffs, price lists or similar items does not constitute an offer.

"But the display of goods with price quotations is considered as a rule as an offer."

Q. Can you give me any examples in which such a reservation of not being legally binding is evident from the nature of the situation or from the surrounding circumstances? A. I would say, for instance, if it is only a joke, or if it is evident that it is impossible to fulfill, to make the performance of such an offer.

Q. Suppose the offer concerns something forbidden by law, would that be an illustration of what you are talking about?

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1139 By Mr. Gordon:

Q. Can you give an example of a declaration which excludes the legal binding of an offer? A. For instance, if the offerer says "I offer an agreement" or understanding, a contract, "with exclusion of legal binding" or if he makes use of a certain term, a special word excluding the legal binding in the general understanding.

Q. Can you give me an example of such a term which excludes the legal binding? A. I would say, for instance, a debt of honor.

Mr. Burroughs: I didn't understand that.

1140 The Witness: A debt of honor. I beg your pardon for my bad English.

Mr. Burroughs: It is all right. I just didn't understand it. It is my hearing.

The Witness: Or a gentlemen's agreement.

By Mr. Gordon:

Q. Now you have used the expression "gentlemen's agreement." Is that expression used in Swiss business transactions? A. Yes.

Q. When so used, does it have a special meaning? A. It has the meaning that there is no claim before the court.

Q. Now let me ask you—you say gentlemen's agreement—when the Swiss are talking to each other in German, and they wish to use the words "gentlemen's agreement", do they say "gentlemen's agreement" as we do in English, or do they translate those two words into Swiss?

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1141 The Witness: We have no—or we make no use of a translation of the words "gentlemen's agreement." Even if we speak German, we use the word, the English word, "gentlemen's agreement."

By Mr. Gordon:

Q. Can you give me some examples of cases where there would be gentlemen's agreements? A. For instance, there are well known gentlemen's agreements between banks. There is one, if my recollection is right, from 1935, the Federal National Bank—that is our state bank—and the other banks concerning giving mortgage notices. That is an agreement between the banks.

There is another well known agreement between the banks from 1937 concerning the foreign—the credits—no, the debts against foreign people, against people not residents in Switzerland, and in this agreement it was provided that there would be given no interest to such monies from people out of Switzerland who have their money in Switzerland.

But there are other gentlemen's agreements also between business men. There is an expression which is used in all these cases in which you will have no lawsuit afterwards and no possibility of legal consequences.

Q. Will you tell the Court what this book is?

1142 (Handing the witness a book) A. That is a direc-

tory,—manual of bank matters, money matters and stock exchange matters, in Switzerland.

Q. When was that published,—can you tell? A. In 1947.

Q. Is that book considered authoritative among business men and lawyers? A. Yes, sir.

Q. Do you use it yourself in the practice of law? A. Yes, sir.

Q. Do you have a copy in your own library? A. That is my book.

Q. That is your book? A. It was my book.

Q. You had it before you came over here? A. Oh, yes, long before.

Q. Now, will you turn to page 247, and see if that book contains a definition of "gentlemen's agreement"?

Mr. Burroughs: Before you proceed to do that, if Your Honor please, I would like to ask him a few questions in connection with it.

The Court: Any objection?

Mr. Gordon: No, sir.

The Court: Very well.

Q. (By Mr. Burroughs) Who publishes that book,
1143 Doctor? A. Shall I show the Reporter? Dr. Randolph J. Kaderli, Dr. Edwin Zimmerman—with the help of a lot of other people, which are noticed on page XI.

Q. Is that an official publication of any sort in Switzerland? A. What do you mean by "official"?

Q. I mean does it have the court's approval, or the Government's approval, or is it published by any recognized authority, official authority, in Switzerland? A. It is not usual—no, I would say not, and it is not usual that authorities approve books like this.

Q. What is it, more or less of a textbook that bankers refer to? A. You have all the expressions, special expressions you need in these matters, like in a dictionary, and then you have explanations of what it is,—a definition.

Q. Do the courts accept that book as a standard work? A. I think yes.

Q. Now, you think. Do you know? A. I didn't ask the court.

Q. Well, I mean, when you have a problem which is covered by some passage in that book, before a court, do you cite that book as an authority? A. Yes.

Q. You do? A. Yes.

1144 Mr. Burroughs: That is all.

By Mr. Gordon:

Q. Will you turn to the part that has to do with gentlemen's agreements?

The Court: I yet do not know what it is. A dictionary of financial matters, is that it?

Q. (By Mr. Gordon) Will you explain to the Court?

The Court: What is this book?

The Witness: That is a book concerning all the expressions you need, or are needed, in questions about — are needed for bank people, money—not for bank people—money, and stock exchange cases and matters. And there you find explanations about words that are used, generally used, also in such matters. You can, for instance look about mortgages, about contracts, about criminal questions, about clearing questions, you will find an answer in it.

The Court: It is a legal dictionary, is it?

The Witness: It is something like a legal dictionary.

The Court: Including financial and commercial terms, is that it?

The Witness: Yes.

The Court: I see.

Mr. Gordon: Have you anything more?

The Court: No.

1145 By Mr. Gordon:

Q. Doctor Wehrli, look at page 242, and see what it says about gentlemen's agreements.

Mr. Burroughs: I object to the witness referring to this book, as it has no legal standing, as I understand his an-

swers, in Switzerland. It seems to me as though it is probably like our Martindale's Law Digest, or something of that sort that is published here.

The Court: Well, one of the issues in this case is whether or not the parties had a meeting of the minds as to an agreement, and if the words "gentlemen's agreement" were used, I think it is relevant to know what that shows,—and apparently there is no dispute that they were used.

Mr. Burroughs: At some subsequent time after June 6th, yes.

The Court: I think it is relevant to know the usual meaning of that term as used by Swiss business men in Switzerland. Is that your purpose?

Mr. Gordon: That is it. Yes, sir. Of course.

Mr. Burroughs: Well, he has said that when they speak in German, they use the English term, "gentlemen's agreement", as I understand it, that there was no such term in German or in Swiss. Is that right?

The Witness: You find just in this book not the translation, but the English words "gentlemen's agree-
1146 ment" here.

Mr. Burroughs: Well, now, I think the witness is qualified to testify as to what his understanding of that term "gentlemen's agreement" is, without referring to some book such as this, which, again I say, he testifies has no legal standing. It is simply a book that bankers and others refer to from time to time as more or less of a dictionary.

Mr. Gordon: Well, you asked him if he would get the book out in court.

Mr. Burroughs: He said he thought so.

Mr. Gordon: He said he thought so—he said he would, that he had the book in his own law library.

Mr. Burroughs: He didn't say the courts would follow it.

Mr. Gordon: This Court may not follow it, but you are talking about the weight of the evidence now. This is just evidence—

The Court: I will allow it.

By Mr. Gordon:

Q. Have you made an English translation of that? A. I have one here.

Q. Will you read that, please? You can check it (Mr. Burroughs).

Mr. Burroughs: What are you referring to now, what section?

The Court: Start out and quote what there is in
1147 that book, in English, and then state the balance is in, whatever it is, Schweitzerdeutsche, or whatever it is, and then translate it, so we will know what you are talking about.

By Mr. Gordon:

Q. Give the name of the book, the page, and so forth. A. I open this book on page 242.

Mr. Burroughs: Ask him to give you the name of it first.

Q. (By Mr. Gordon) Give the name of the book again. A. Shall I show it to you?

Q. No.

Mr. Burroughs: Just state what it is.

The Witness: Handbook—

Mr. Burroughs: Can you translate it into English?

The Witness: Of banking, money and stock exchange matters of Switzerland.

By Mr. Gordon:

Q. How many pages does the book contain? A. 605.

Q. Two columns on each page? A. Two columns on each page, yes. Now, on page 242 we find in the alphabetic order, between a question about banks and about shares, you will find the expression, and this expression is in English words,

"gentlemen's agreement." There are about 15 lines.

1148 Q. Read the English translation, and then we will let these gentlemen check it, and see if it is correct.

Mr. Burroughs: Can we do it while he is reading the English?

The Court: You can stand alongside of him.

Mr. Gordon: Correct him after he gets through. Let him read it through and then make any corrections that appear to be necessary.

By Mr. Gordon:

Q. Give us the translation, please. A. "An agreement between two or more parties in which they bind themselves to a certain manner of conduct without giving this obligation a legally enforceable character. One proceeds from the supposition that the parties, without being legally bound, will keep to the agreements made. Thus, gentlemen's agreements are concluded when the parties both consider each other absolutely reliable. The violation of an obligation undertaken on the basis of a gentlemen's agreement cannot be legally prosecuted. In banking business (especially between the National Bank and other banks), a gentlemen's agreement is often employed; the mortgage gentlemen's agreement (cartel) is a case in point."

Mr. Gordon: Do you gentlemen agree on the translation?

Mr. Burroughs: Yes.

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1149 Q. What is the meaning of the word "gruppe" in Swiss law? Let me ask you first if the term is an expression in Swiss law? A. Yes. This term is in the law.

Q. Can you give me any examples in the law where you find the word "gruppe"? A. For instance, in the Swiss Obligations Code, Article 708.

Q. Will you please read that to us? A. You didn't give me the second part of the translation. Thank you. Shall I read it?

Q. Yes. A. "708. The board of directors is elected by the general meeting, in the first instance for a period not exceeding three years and subsquently not exceeding six years. The members of the board are eligible for reelection unless the articles provide otherwise.

"The articles may appoint the directors for the first three years.

"If during any business year one or more directors cease to act or are prevented from carrying out their duties, the remaining directors may continue to act as the board until the next general meeting, unless the articles provide otherwise.

1150 "If there are several groups of shareholders with conflicting legal interests, the articles must insure to each group the election of at least one representative on the board of directors. Important groups are also entitled to be represented on any special committee of the board of directors.

"The articles may contain further provisions for the mode of election for the protection of minorities or of various groups of shareholders."

Q. Now, will you pick out the right one—I think one of these books is the bankruptcy code.

Mr. Burroughs: Were you reading the German or English there, Mr. Wehrli?

The Witness: I was reading now the English translation from the book of Mr. Wettstein.

Dr. Schiess: I have to object to part of his translation.

Mr. Burroughs: Will you state your objection?

Dr. Schiess: There is a German expression, "mitverschiedener rechtstellung", and this word is translated as "conflicting interests", and I would like the translation made as "different legal positions."

Mr. Gordon: What do you say to that, Mr. de Graffenried?

Interpreter de Graffenried: I agree with the translation, "different legal positions."

1151 Mr. Gordon: How is that?

Mr. de Graffenried: Different legal positions.

Mr. Gordon: You agree with Dr. Schiess?

Mr. de Graffenried: Yes.

Mr. Gordon: We accept that, then, as a correction of the translation to that extent.

The Court: I am not sure—were you reading from some English volume there?

Mr. Gordon: May I explain that?

The Court: I do not know whether this disputed word "gruppe" was in this book he was reading from, or not.

Mr. Gordon: I was just going to ask him that.

The Court: I thought you were going to another subject when you picked up some other books.

Mr. Gordon: That is right.

The Court: I am sorry I interrupted you.

Mr. Gordon: It occurred to me that I had not made that clear.

The Court: All right.

By Mr. Gordon:

Q. Will you turn to the German text of this Article 708? A. Will you give me the German text, please?

Q. Now in two places I think in reading the English translation you used the word group. Will you tell the
1152 Court what the German word was that was thus translated into our English term "group"? A. There are four times in which the word "gruppen" is used in the German text.

Mr. Burroughs: That is not "gruppe", is it?

The Witness: Gruppe, or the plural, that is gruppen. And this is four times you will find it in the German text, and also four times in the translation I read.

By Mr. Gordon:

Q. What is the first illustration of that in German,—"several groups of shareholders"—is that the first one in the fourth paragraph? A. Article 708?

Q. Look at the fourth paragraph and read the German text which is translated "several groups of shareholders"? A. mehrer gruppen von aktionaren, and the English is several groups of shareholders.

Q. Where does the word next occur, in the next line, each group? A. Each group, in German jeder gruppe.

Q. And in the next line you translated important groups. What are the German words? A. wichtige gruppen.

Q. And in the last line, the fourth time the words "groups of shareholders" occurs. What is the German for
1153 that? A. ein zelner gruppen.

Q. Is the word "gruppe" used there, too? A. Gruppen.

Q. Now, will you be kind enough to turn to the bankruptcy law, Article 110? A. Yes, sir.

Q. Do you have a translation of that? A. No, sir.

Q. Well, let me read you a translation, sentence by sentence, Doctor Schiess, you go up and look over his shoulder and see if that is correct.

Mr. Burroughs: You do not have a copy of that, do you, Mr. Gordon?

Mr. Gordon: You can come here and look over my shoulder.

By Mr. Gordon:

Q. Article 110, and that is of what, the Swiss Code of Bankruptcy? A. Yes.

Q. The first sentence is "Creditors who 30 days after the execution of the seizure of property in execution apply for seizure participate therein." Is that a fair translation of that? A. Yes.

Mr. Gordon: Do you say yes?

1154 Dr. Schiess: Yes.

By Mr. Gordon:

Q. "In these cases the seizure is complete insofar it is necessary for satisfaction of a claim of such a creditor's group" A. Yes.

Mr. Gordon: Is that right?

Dr. Schiess: Yes.

Q. (By Mr. Gordon) What is the German word for group? A. It is glaubeger gruppe, meaning creditors' group.

Q. "Creditors whose applications for seizure of property in execution are presented only after expiration of the period of 30 days (form) in the same way for the groups participating in a separate seizure." What is the word for groups there? A. Gruppen.

Mr. Gordon: Is that a correct translation, gentlemen?

Dr. Schiess: Yes, it is.

Q. (By Mr. Gordon) The next sentence is "assets already seized can be seized anew but only insofar the sum proceeding therefrom will not have to be remitted to the creditors for whom the proceeding seizure took place." Is that a fair translation? A. Yes.

Dr. Schiess: Yes.

1155 Q. (By Mr. Gordon) The word "group" doesn't appear in that sentence? A. No.

Q. That completes 110. That is Section 110 of the Bankruptcy Act? A. Yes.

Q. What is the meaning of the term "gruppe" in Swiss law? A. That is always more than one person—several persons.

Q. Now, in these statutes that you have quoted, the groups are given certain special rights. How must those rights be executed? A. The members of the groups must act as a whole.

Q. The members of the group must act as a whole, is that what you say? A. Yes. All the members of the group are regarded as a whole, as being together.

Q. My difficulty is you used the word "member." Mr. deGraffenried straightened it out. You say the member of the group. Do you mean members of the group?

Mr. de Graffenried: Yes, members of the board.

The Witness: Yes, members of the board, the persons which are in the group, or persons which are in the group who are regarded as a group of some account. Or one must act for all with a power of attorney.

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1156 Q. Can the word "gruppe" refer to aggrega-
1157 tions of artificial persons, such as corporations, as well as individual beings? A. The group can be composed of both, of physical persons and corporations, or corporations only.

Q. Now, suppose an offer is addressed to a group, how may a binding acceptance be made?

The Court: I thought you might be specific,—addressed to a group of artificial entities or to individuals—persons.

Q. (By Mr. Gordon) All right. I will put it that way. Suppose an offer is addressed—we will take one at a time—suppose an offer is addressed to a group consisting of corporations, how under the Swiss law, in your opinion, must that offer be accepted in order to make a valid acceptance? A. By all the members of the group, or by one member of the group who is in possession of a power of attorney or acts as a representative for the others.

Q. Now I will change the question, and say that the offer is addressed to a group of individuals. What would be your answer? A. There is no difference in the answer.

Q. And suppose the offer is addressed to a group composed of partly individuals and partly corporations, what would your answer be? A. The answer is always the
1157 same.

1158 Q. Would such an acceptance as you have described, whether done by all of them, or done by power of attorney, be an acceptance for all members of the group, that would bind all members of the group? A. Please repeat the question.

Mr. Gordon: Well, I will withdraw that.

The Court: Then we will suspend for five minutes, while we change reporters.

(Thereupon, a recess was taken from 11:15 a. m. to 11:20 a. m.)

1159 The Court: You may proceed.

By Mr. Gordon:

Q. Doctor, may the word "gruppe" be used as designating a parent corporation and its subsidiary corporations? Do you know what I mean? A. A parent?

Q. For instance, could the words "Remington Rand Gruppe" be used as designating Remington Rand, Incorporated, and any other subsidiaries of the Remington Rand Company? A. I would say Remington Rand Gruppe means all societies which are together with Remington Rand.

Q. That is one use of the word "gruppe"? Is that right? A. I would say that is a general rule.

Q. And there are also other uses of the word "gruppe"? A. No, that would be the use of the word "gruppe."

Q. Suppose several individuals were acting as agents for Remington Rand, would they be called the Remington Rand Gruppe? A. That is possible too.

Q. Either is possible? A. Either is possible.

Q. Is it possible to assign an offer in Swiss law? A. No, only if the officer declares, or it is in the offer that he makes the offer—that he gives the right to assign.

1160 Q. Is it possible under Swiss law that an offer may be accepted by a person to whom the offer was not addressed? A. No.

Q. In Swiss law, in your opinion, if someone says that he is ready to accept an offer to buy, would such a statement constitute an offer to sell? A. It is not usual to make an offer in such a complicated way. If I will offer to sell, I say "I will sell." If you use the words—"if you make me an offer to buy, I will sell," that seems to me to be an indication that there is no will to buy.

Q. What is a precontract? A. A precontract is a contract with the obligation to conclude a certain other contract.

Q. In your opinion can a declaration of readiness to accept an offer be a precontract? A. If it was really the will to take the obligation to conclude a certain contract, it can be a precontract.

Q. Then you would have to examine all the other facts and surrounding circumstances? Is that right? A. Yes.

Q. Is it possible to assign a precontract? A. No.

Q. Is it necessary to follow any particular form
1161 under the Swiss law in making a contract? A. Generally speaking, no. If there is a legal prescription or a special form, or if the parties reserve a special form, then the special form must be observed.

Q. Does Article 16 of the Swiss Obligation Code cover this point? A. 16?

Q. Yes. I think not, no.

Q. Maybe I have the wrong article. Do you have any particular article in the Swiss code in mind on this point we have just talked about? A. About precontracts?

Q. No, Dr. Wehrli, about the form of concluding a contract. A. Oh, yes, we have the Article 16. I thought you asked me about 16—or 17?

Q. No, 16. A. 16. Yes, there you have the prescription about a reservation of form.

Q. Will you kindly read the English translation of Article 16? A. Article 16: "Here the parties to a contract for which the law requires no special form have stipulated
1162 to use a special form, there is a presumption that they will not be bound until the special form is fulfilled, is complied with."

Q. Is complied with? Can you give an example of reservation of a special form by the parties? A. For instance, if they say that they make the reservation to a written form.

Q. Is it possible in Swiss law for a contract to be void? A. Yes.

Q. I have reference to Articles 20 and 66 of the Swiss Obligation Code. Will you see if those have anything to do with this? A. That's right. Article 20 of the Swiss Obligation Code.

Q. Will you read that? A. It is the following:

"Contracts containing provisions which are impossible, illegal or contra bonos mores are invalid, but if the objection applies only to single parties of the contract, then the invalidity only extends to those parties, unless it appears that the contract would not have been entered into without the invalid part."

Q. Pardon me just a moment. You have just read from Article 20 of the Swiss Obligation Code? Is that right?

A. Yes.

1163 Q. Now, what does that expression "contra bonos mores" mean? It has a meaning here but we want to know what it means in Switzerland. A. That means it is not honorable—it is against the good custom, against public policy.

Q. What do you say, Dr. Schiess?

Dr. Schiess: Against public morals.

Mr. Gordon: Doesn't "mores" mean customs?

Dr. de Graffenried: What is that?

Mr. Gordon: Mores? Doesn't that mean customs, against good customs?

Dr. de Graffenried: Yes, I think for customs morals is a different meaning, of course.

Mr. Burroughs: It doesn't mean policy in Latin, does it?

Dr. de Graffenried: Not in Latin.

Mr. Gordon: But it means customs in Latin, does it not?

Dr. de Graffenried: Yes, it does. Mores is customs.

Mr. Gordon: "O tempora, O mores." Dr. Schiess stands mute.

By Mr. Gordon:

Q. Now, turn to Article 66, please. A. Yes, sir.

1164 Q. Article 66 of the Swiss Obligation Code, will you please read that? A. "66. Recovery is not allowed of what has been given with the purpose of obtaining illegal or immoral results."

The Court: What is that? I had to get this.

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Q. When were these blocking decrees that you re-
1165 fer to made?

Mr. Burroughs: He hasn't referred to them.

Mr. Gordon: He said "blocking decrees" in his answer.

Mr. Burroughs: But he hasn't said there were any specific ones passed.

The Court: Overruled. You may answer.

By Mr. Gordon:

Q. What was the date? When were the blocking decrees enacted? A. In February, 1945, the German assets in Switzerland were blocked by decree from the Swiss Federal Council, and then from that time there were other decrees, amendments of the blocking decrees, obligation to announce German assets decrees, and so on.

Q. I show you Remington Rand Exhibit No. 46, which was put in evidence at the time Dr. Schiess testified. Will you please look at that for a moment and tell me if that exhibit contains the blocking decrees you are talking about? (Handing a paper to the witness.)

A. That is right.

Q. Would violation of blocking decrees be punished? A. Yes, sir. Look at Article 10 of the decree of February '45. It is punished by imprisonment up to a year, or penalties
up to 10,000 francs, or both together. Also, if you
1166 make violation of the decree by negligence, careless-
ness, it is punished. And also the attempt of a violation of the decree would be punished.

Q. I have a translation of Article 10. Would you mind looking at it again and see if this is a correct translation. This is Article 10 of the blocking decree of what date? A. I have no translation.

Q. No, but you referred to Article 10. What blocking decree were you referring to, what date? A. That is the blocking decree from February 16, 1945.

The Court: When was it repealed, if it ever was repealed?

The Witness: I beg pardon?

The Court: When was it repealed, vacated, if it ever was?

The Witness: It is still law.

Mr. Burroughs: It was amended in 1948.

By Mr. Gordon:

Q. This Article 10 was in effect all during this period from 1945 through 1946 and 1947, inclusive, was it not? A. Yes, sir.

Q. Now I will read this slowly:

1167 "Article 10. Any person who, on his own account or as agent or attorney in fact of an individual or private corporation domiciled in Switzerland, or as a member of an organ of a governmental or private corporation, handles a payment covered by the provisions of the present resolution in any manner except by deposit in the Swiss National Bank."

Is that right?

Dr. Schiess: Yes.

Mr. Gordon: (Reading:) "Any person who, in one of the characters indicated in the first paragraph, accepts such a payment for the account of the beneficiary and does not remit it to the Swiss National Bank—"

Dr. Schiess: No, blocks, who blocks account as it is deposited.

Mr. Gordon: That sentence I just read, is that wrong?

Dr. Schiess: It was not completed.

Mr. Burroughs: He stopped before he completed.

Dr. Schiess: It is of no importance whether it is this way or the other way.

Mr. Gordon: All right. (Reading:) Any person who, as beneficiary or agent, attorney in fact or member of an organ of a corporation accepts such a payment in Switzerland for the account of the beneficiary; any person who dis-

1168 poses of property contrary to the provisions of Articles 2 and 5; any person who executes disposal orders given contrary to the provisions of Article 2 and 5;

any person who contravenes the provisions decreed by the Federal Department of Public Economy, or hinders or attempts to hinder in any manner in Switzerland, the provisions established by the Authority for the carrying out of the present resolution, shall be subject to a maximum fine of 10,000 francs, or imprisonment for not more than twelve months. The two penalties may be cumulative. The general provisions of the Penal Code of 21 December, 1937, are applicable. Negligence is likewise punishable."

By Mr. Gordon:

Q. Is that a correct translation of that Article 10? A. I think so, yes.

Mr. Gordon: Do you have any question about it?

Dr. Schiess: No.

Mr. Gordon: Do you agree with it, Dr. de Graffenreid?

Dr. de Graffenried: Yes.

By Mr. Gordon:

Q. It has been suggested in testimony in this case that Article 8 of the blocking decree prescribes that if any payment is made in violation of the decree, the man who has paid it must pay the same sum to the Swiss National
1169 Bank, and therefore it is not necessary to make the transaction void. What is your opinion on that point? A. I think this article 8 is no help. You must look at the purpose of this blocking decree. The Swiss Government blocked all the German assets in Switzerland, to make it impossible that the Germans in Switzerland, or the Germans in Germany, could dispose of their assets in Switzerland. The blocking was also the first step to preparation of liquidation and expropriation of these German assets.

Now, if another person, not a block of Germans, pays a sum which he had to pay to the Germans, not as it is prescribed, through the National Bank, then he is obliged to pay the same sum once more to the National Bank or the Compensation Office. But if the German himself, whose

assets are blocked, makes payment or deposits of something with his assets, it doesn't help if he has to pay the same sum once more to the National Bank or the Compensation Office, because he will take the certain payment also from his own assets which are blocked, and therefore the result would be the defeating of the blocked assets, and therefore it must be the consequence, and it was the will of the Government and the Compensation Office to make all such disposition void, and to furnish people who would not respect the decree.

Q. In your opinion would an option concerning blocked assets be forbidden and void or not? A. An option
1170 also would be void and forbidden. You must look at—or you can look at Article 2, I think, of the decree, of one of these decrees, the decree from May 29, '45, concerning the obligation to announce all German assets to the Swiss Compensation Office, and in this decree you have a kind of a definition of the meaning of "assets." You have there definitions that are regarded as assets, also all rights arising from contracts, interest on rights, and options. You will find the word, the term "option" in this decree as an example for German assets.

Q. Will you turn to Article 2 of the decree of May 29, 1945, and I will read the translation and let the translator follow this again and see if it is correct:

"Article 2—" This is a decree of May 29, 1945. I am reading from Remington Exhibit No. 46—

"The following assets are especially considered to come within the provisions of Article 1: credits, property—"

Dr. Schiess: This is not in evidence.

The Court: Mr. Burroughs, your associate counsel, Dr. Schiess, has said the document is not in evidence.

Mr. Burroughs: I understood that the witness was directed to our exhibit, which was given a certain number, so he said—Mr. Gordon said—he asked him to look at our exhibit. I didn't know that he was looking at something else.
1171 Mr. Gordon: Well, this particular decree is not in evidence?

Dr. Schiess: No, we didn't put it in.

Mr. Gordon: Then let me put it in. You left that one out?

Dr. Schiess: No.

The Witness: May I explain this?

Mr. Gordon: Let us start at this point.

By Mr. Gordon:

Q. Will you please state to the Court what the pamphlet or volume is that you have in your hand? A. I have here the decree of the Swiss Federal Council concerning the obligation to announce German assets in Switzerland, dated May 29, '45, and this example, or this publication, has here on the background the official certification of the Swiss Chancellery.

Dr. Schiess: That is O.K.

The Witness: That is the official text.

Mr. Gordon: Then I offer—you have no objection to having this go to the Court? You don't want to keep it?

The Witness: No, certainly.

Mr. Gordon: Then I offer in evidence the volume just described by the witness, which contains decrees of
1172 February 19, 1945, and March 29, 1945 and November 30, 1945, and April 1, 1947, and ask that it be marked "Plaintiff's Exhibit 10."

The Court: It will be received.

(The document referred to was marked Plaintiff's Exhibit 10 and received in evidence.)

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1176 Q. I will now read you Article 2—we were interrupted when we were about to read Article 2. We haven't read it yet.

The Court: Article 2 appears in Plaintiff's Exhibit 10?

Mr. Gordon: That is right—of the decree of May 29, 1945:

"The following assets are especially considered to come within the provisions of Article 1: credits, property and Swiss money or foreign money, debts, bills, claims, bank

notes and other means of payment, gold and other precious metals, obligations of value, securities (and these include bills for sale), merchandise and stocks of merchandise (even in free ports) furniture, collections—even if the property is found in open or closed deposit or in safe deposit boxes—shares of all kinds, realty, license rights, trade marks, copyrights, concessions, interest, pensions, insurance rights, and so forth, as well as all economic rights or interest in such property or in contracts concerning such property, as for example, use of property and other services, liens, preemptions and redemption rights, options and so on."

Doctor, is that a correct translation?

Dr. Schiess: I would say in general yes, but I have to reserve my definite decision in detail, because it is now rather difficult to say whether it is correct in all re-
1177 spects. I could not follow it quite closely enough.

Mr. Gordon: I am willing to let the point stay on that. If Dr. Schiess finds when this is written up that it is not correct, we will try to deal with it accordingly.

The Court: Of course, I will have to wait until the testimony is received; then I will have to make up my mind.

Mr. Gordon: Yes.

By Mr. Gordon:

Q. What is the word that is translated "option"? A. We have here in this German text, the German word, the German term "optionen." That means a plurel of option—o-p-t-i-o-n-e-n.

Q. There was testimony in this case, if I remember correctly, from some of the experts, that the word "option" is a term unknown to the Swiss law. Would you agree with that? A. I beg pardon?

Q. Some of the experts testified in this case, if I recall correctly, that the word "option" is a word unknown to the Swiss law. Would you agree with that? A. I would say, generally speaking, the expression "option" is not well used, but here in this decree you have the word "option," and it is a legal expression.

Q. Under Swiss law, suppose there was stock in an
1178 American corporation which was held by a Swiss corporation, which was blocked in Switzerland, would, in your opinion, a contract concerning the selling of such stock, or concerning an option to sell such stock while the blocking was on, be valid A. It is no doubt that the Swiss point of view is that also shares of stock which are not in Switzerland but which are owned by a Swiss person or society—or it may be a German society or person—having his domicile in Switzerland, are regarded as assets of this resident in Switzerland, and if this resident in Switzerland is blocked, especially blocked under the blocking order from February '45, all the stocks and shares—they may be in Switzerland or in the United States—are regarded as blocked.

Q. And if they are blocked, would—

The Court: That is not responsive to the question.

Mr. Gordon: That is what I was going to clear up.

Q. (By Mr. Gordon) My question was: in such a case would a contract to sell such stock or an option to sell such stocks—an option to sell them be valid? A. No.

Q. It would not be valid? A. No. It would not be valid. It would be void, because it is against the blocking decree.

Q. What is the meaning of "provisional blocking"
1179 under the Swiss law? A. Provisional blocking is a blocking which is not definite. It may be that the blocking is afterwards lifted, the decision about which is not yet taken.

Q. Is there any difference between the scope of provisional blocking and the scope of final blocking? A. No, the blocking is as valid and the consequences of the blocking are the same if there is a provisional or a definite blocking. It is only a question of time in which it is blocked. Perhaps a provisional blocking will become definite, but the blocking is regarded as a formal and strong blocking. There is no difference between provisional and definite blocking.

Q. Except as to the length of it? A. It is only regarded as a possibility to put it away if the Government accepts.

Q. In your opinion, would violation of provisional blocking be punished in the same way? A. In quite the same way.

Q. And do all the opinions that you have expressed as to the validity or invalidity of contracts during the blocking—would you make any distinction as to whether the blocking is provisional or final? A. No.

Mr. Gordon: Will Your Honor indulge me for a
1180 moment? I want to try to find an exhibit—there are so many of them. I am more of a filing clerk than a lawyer almost in this case.

Q. (By Mr. Gordon) Dr. Wehrli, you have testified, I think, that you represented Interhandel in relation to their controversy, let us call it, with the Swiss Compensation Office. Is that right? A. I did.

Q. And did you handle that matter yourself? A. Yes.

Q. From the beginning to the end? A. Yes.

Q. And you are very familiar with it? You know about it? A. Yes, sir.

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1185 Q. Now, let us take the third one. That is Plaintiff's Exhibit No. 13. Have you ever seen that before? A. Yes, sir.

Q. When did you first see it? A. In 1945.

Q. Under what circumstances did you see that? A. The same as the others, I suppose a legal paper. That is a little later, because that is November and the others are in October. But it was some time in the autumn of 1945 I received this paper from my client as the basis for the lawsuit against the Compensation Office of Switzerland.

Q. Now, this No. 12 is written on a letterhead. Are you familiar with that letterhead? A. Yes.

Q. What is it? A. That is the official paper of the
1186 Swiss Compensation Office.

Q. Have you seen that before, that kind of paper? A. Yes.

Q. Many times? A. Yes.

Q. Have you had many cases before the Swiss Compensation Office? A. Some.

Q. Do you know the Swiss Compensation Office officials? A. Yes.

Q. Do you know who signed that letter? A. This one?

Q. Yes. A. Yes.

Q. Who was it? A. It was the managing director. His name is S. C. Schwab. And the other name is Bohi—B-o-h-i.

Q. Now look at No. 13. What would you have to say as to that letterhead? Is that on the same kind of letterhead? A. That is the same kind.

Q. And are the signatures on that by the same people or by different people? A. That is the same director Schwab, and then the other is Ott.

1187 Q. How long did you handle the case for Interhandel? A. From October or November '45, until January, '48.

Q. And during that period did you talk to Mr. Ott about it? A. Yes.

Q. And the others whose names are on there? A. I think I did not talk with Mr. Schwab.

Q. You did not talk with him? A. I did not talk to him personally.

Q. What happened in 1948?

Mr. Burroughs: What do you mean "what happened"?

Q. (By Mr. Gordon) What was the culmination of your work in connection with this matter? A. In January '48?

Q. Yes. A. Then the judgment was—the case was finished and I received the judgment, and our appeal was granted. We won the case.

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1191 The Court: Very well.

As I understand it, Dr. Wehrli, these particular papers, marked Plaintiff's Exhibit 11, 12 and 13, were handed to you by some representative of the Interhandel?

The Witness: That is correct.

The Court: At or about the dates set forth in them?

The Witness: Yes, sir.

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Q. Do those letters constitute the official action of
1192 the Swiss Government in blocking Interhandel? A. Please repeat the question.

Mr. Burroughs: I am going to object to that on the ground of form.

The Court: Objection overruled.

Mr. Gordon: Will you read the question?

(The Reporter read the question as follows:

"Q. Do those letters constitute the official action of the Swiss Government in blocking Interhandel?") A. Yes.

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1195 **Walter Germann** was called as a witness for and on behalf of the Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Gordon:

Q. Mr. Germann, will you please state your full name? A. Walter Germann.

Q. Where do you live, Mr. Germann? A. In Basle, Switzerland.

Q. Just for the purpose of the record, how old are you, approximately? A. 41.

Q. Have you any connection with Interhandel, the plaintiff in this case? A. I am a member of the Board of Directors, and the Manager of the corporation.

Q. How long have you been the manager of the corporation? A. Since 1945.

Q. And how long have you been on the Board of Directors? A. Since November, 1948.

Mr. Gordon: I would like to have these documents marked for identification as Plaintiff's exhibits, with the next number, which will be what?

1196 The Deputy Clerk: No. 14.

Mr. Gordon: Mark them 14 and 14-A.

(The documents above referred to were marked, respectively, Plaintiff's Exhibits Nos. 14 and 14-A. for identification.)

By Mr. Gordon:

Q. Mr. Germann, I show you two documents which have just been marked for identification as Plaintiff's Exhibits 14 and 14-A, and ask you if you have ever seen those documents before? A. I have seen these documents.

Q. When did you first see them? A. I saw them first on October 31st, 1945, when I opened the envelope containing these letters.

Q. Do you know what this letterhead is on which they are written? A. This is the letterhead of the Swiss Compensation Office.

Q. Did the two documents come in one envelope? A. Yes. The second document is the enclosure mentioned on the first document, on the letter.

Q. Do you know the signatures? Do you know these gentlemen who have signed the letter? A. Yes, sir.

Q. Who are they? A. The signature to the left is the signature of Mr. Schwab, president of the manage-

1197 ment of the Swiss Compensation Office, and the second signature to the right is the signature of Mr. Bohi, one of the managers of the Swiss Compensation Office.

Q. And to whom is that letter addressed? A. This letter is addressed to our corporation.

Q. That is, what is called in this case, Interhandel? A. Yes, it was mentioned in its former name, which was changed in late 1945.

Mr. Gordon: Do you have any questions, Mr. Burroughs?

Mr. Burroughs: Yes. I would like to ask him some questions.

By Mr. Burroughs:

Q. You say that that is on the letterhead of the Swiss Compensation Office. How do you know that? A. This letterhead is very familiar to me. I have seen it many times before I had received this letter, and I have seen it many times since then.

Q. And your testimony is based upon what you see there, the caption of the letterhead. Is that correct? A. According, as to the letterhead, Yes.

Q. Now, as to the signatures, how often have you seen the signatures of those gentlemen whose names are appended there? A. Many times.

1198 Q. Are you personally acquainted with these gentlemen? A. Yes, sir.

Q. You have seen them write? A. Yes, sir.

Q. You have seen them sign their names? A. I have seen Mr. Schwab sign his name, not Mr. Bohi, but I have received many letters subsequent to conferences I had with Mr. Bohi and after these conferences he has sent letters with his signature.

Mr. Burroughs: That is all I care to ask him.

Mr. Gordon: I offer that document in evidence, if the Court please.

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1205 Mr. Gordon: Then we offer in evidence as Plaintiff's Exhibit No. 14-A the translation, with the understanding that the translation is agreed to except for that one word, and that it may be agreed that one translator would translate that word as "conveyance" and the other as "disposition." It does not seem to me to make any particular difference. That is 14-A. (Shows to the Court.)

The Court: Do you object, Mr. Burroughs?

Mr. Burroughs: I do, Your Honor.

The Court: I don't know that Dr. Wehrli has tes-
1206 tified that this was the method of taking the action, or whether it was simply a letter advising the recipient that that action had been taken.

Mr. Gordon: We will put him back when we get through with Mr. Germann. Meanwhile, let it stand until we get through with Mr. Germann on this other one.

Now, have you (speaking to the Interpreters) agreed on that one, yet?

By Mr. Gordon:

Q. Mr. Germann, while they are looking at the translation of 14-A, I show you Plaintiff's Exhibit No. 13, which is a letter of November 15, 1945, and ask you if you have ever seen that before? A. Yes, sir.

Q. And when did you see it? A. I saw it in November, 1945 when I opened the envelope which contained this very letter.

Q. And to whom is that letter addressed? A. This letter is addressed to our corporation.

Q. And again do you recognize the letterhead? A. I recognize the letterhead as the one of the Swiss Compensation Office.

Q. Do you know the signatures? A. I know the signatures.

Q. And whose are they? A. On the left side it is
1207 again Mr. Schwab, and on the right side it is Mr. Ott.

Q. Now, you have explained already who Mr. Schwab is. Do you know who Mr. Ott is? A. Mr. Ott was at that time a first clerk of the Swiss Compensation Office, authorized to sign for the Compensation Office. He became—

Mr. Burroughs: I move that that be stricken,—authorized to sign for the Swiss Compensation Office, as calling for a conclusion of the witness.

Q. (By Mr. Gordon) He was the first clerk of the Compensation Office. Is that right? A. Yes, sir.

Q. Do you know his signature, too? A. Yes, sir.

Q. Do you know Mr. Ott? A. Yes, sir.

Mr. Gordon: You may inquire.

Mr. Burroughs: I don't care to ask him anything.

Mr. Gordon: I ask to have marked for identification as Plaintiff's Exhibit No. 13-A what purports to be a translation of Plaintiff's Exhibit No. 13.

Mr. Burroughs: You have offered it?

Mr. Gordon: No. I am going to put Mr. Wehrli back on the stand now. I am trying to keep things moving along.

1208 We will let them give us the translation as soon as they can.

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Edmund Wehrli resumed the stand and testified further as follows:

Direct examination

By Mr. Gordon:

Q. Dr. Wehrli, I now show you Plaintiff's Exhibit No. 14, which is dated October 30, 1945, and Plaintiff's Exhibit No. 13, dated November 15, 1945. These letters are addressed to Interhandel. Will you please state in your opinion as a Swiss lawyer what the effect of those letters was?

Mr. Burroughs: I object.

Mr. Gordon: I am trying not to lead him. What other objection can there be?

Mr. Burroughs: The letters speak for themselves.

The Court: Oh, you have objected on the ground that they are not the official acts.

Mr. Burroughs: That is right. I objected to their introduction, and I, of course, object to his testifying as to

1209 what effect they had, because they are not in evidence.

The Court: Well, he may answer a question, if it is propounded to him, as to whether or not these are the official acts of the Swiss Compensation Office, or whether they are something else. Do you object to that?

Mr. Burroughs: I do object to that, because that calls for a conclusion as to the official acts of the Swiss Compensation Office. He has not been qualified to testify as to what constitutes official acts of the Swiss Compensation Office.

Mr. Gordon: He is a lawyer of Switzerland.

Mr. Burroughs: That does not qualify him to testify as to what official acts of the Swiss Compensation Office are.

The Court: If I signed a judgment, and you were called upon as an American lawyer to testify in Switzerland, and you were shown my judgment, you could say that was the official act of the Court. You could give your opinion as a lawyer that it was.

Whereas, if you were shown the card from the Clerk saying that I had signed the judgment, you would say that that was not the official act of the Court.

Mr. Burroughs: That is exactly what—

The Court: And I want to know whether these papers are the official act, or whether they are notifications of some kind, or what they are, and I think as a Swiss lawyer
1210 he ought to be able to testify as to that particular point.

Mr. Burroughs: Before the documents are in evidence?

The Court: Yes. They are not in evidence yet. How else can we find out whether they are the official acts or not?

Mr. Burroughs: I think there is a way of finding out without referring to these particular documents.

The Court: I will permit a question of this witness, if you care to ask it, Mr. Gordon, to this effect,—whether or not Exhibit 13 is the official act of the Swiss Compensation Office, or whether it is something else.

Q. (By Mr. Gordon) You heard the question.

The Court: Is that what you want to know?

Mr. Gordon: Yes. That is what I want to know.

Q. (By Mr. Gordon) Can you answer the Court's question? A. These are the official acts,—the official act of blocking. That is the way the Compensation Office did the blocking.

Q. Now, you are referring to both of those documents, that is, 13 and 14? A. Yes.

Mr. Burroughs: May I ask a question in connection with what?

The Court: Yes.

Q. (By Mr. Burroughs) Are you familiar with the
1211 workings of the Swiss Compensation Office? A. Yes, sir.

Q. When they determine to block someone or some corporation, what happens? A. They send a message, a letter to the gentlemen or society who is blocked, and this sending is the blocking.

Q. They notify them they are blocked, and from then on—A. I didn't understand.

Q. I say, they send them a letter notifying them they are blocked,—right? A. Yes.

Q. Does a decision have to be made before the letter goes out? A. No, sir.

Q. No decision at all? A. That is the decision.

Q. Who makes the decision for the Swiss Compensation Office? A. The Swiss Compensation Office themselves.

Q. Who is the Swiss Compensation Office themselves? A. That is the office which has the mission to fulfill the decree of the Swiss Federal Council.

Q. Who are the Swiss Compensation officials? A. I didn't understand what you mean.

Q. Do they have a commission of one, two, three,
1212 four, or five people? A. There are the directors—some people together are the directors.

Q. How many are there? A. Three, four or five. I don't know exactly.

Q. And how many of those three, four or five does it require to put somebody on the blocking list? A. It is efficient—it is good if two of these gentlemen sign the letter.

Q. It takes two, then, does it, to block somebody officially. Is that correct? A. It may be that one can block also, but I think for the notification it is usual that two gentlemen sign the letter.

Q. Now, then, if I understand you correctly, it is possible that one may make the decision to block somebody, but that two have to sign the letter notifying them that they are

blocked. Is that correct? A. The two sign the letter, yes.

Q. Now, then, there is a decision made to block an individual or a corporation, and once that decision is made, a letter notifying the individual or corporation then goes out. Is that correct? A. I think the ordinary way is that the gentleman, the manager who is working with this case, makes the letter, signs it and gives it to the other gentleman,
1213 he signs, and then the letter is given.

Q. But the decision is made first, is it not? A. No. The decision is made the moment they sign.

Q. Does somebody simply sit down and say to himself, "I think I will block Dr. Edmund Wehrli", and just write him a letter and tell him he is blocked? Is that how that happens? A. He gives the letter to the other gentleman and if the letter is signed and goes out, I'm blocked.

Q. My question is this,—does an individual say to himself, "I think I will write Dr. Edmund Wehrli a letter and tell him he is blocked"? Is that all the official act there is? A. Don't speak so quickly. I don't understand you. I am sorry.

Q. Dr. Edmund Wehrli's case comes before the Swiss Compensation Office—understand that? A. Yes.

Q. One of the individuals then, if I can understand your testimony correctly, says to himself: "I think I will write Dr. Edmund Wehrli a letter and tell him that he is blocked." Is that all the official act that is necessary to put Dr. Wehrli on the blocked list? A. The first thing is, they send me this letter, signed.

Q. No. A. Signed by the two persons. Then I am
1214 blocked.

Q. Is that letter sent before a decision—an official decision, is made to block you? A. There is no official decision before.

Q. There is never any decision before? A. They send me only this letter, and the moment they both sign, this letter is right and in force, and if I receive this letter I am blocked.

Q. Dr. Wehrli, do you want us to understand that without ever considering any evidence as to your German connec-

tions, or as to anybody that you are holding German property, that two people in the Swiss Compensation Office can sit down and say "Let's write Wehrli a letter and tell him he is blocked"? A. No, these gentlemen who sign must be representatives and have the power of attorney that means they have as officials the right to sign for the Swiss Compensation Office. But if they have this right, they can sign this letter and block me.

Q. I understand what they can do with respect to the letter. What I am trying to find out is this: Don't they have to review the charges against you to determine whether there is sufficient evidence to block you before they sit down and write a letter to you and block you? A. What do they have to do?

1215 Q. Don't they have to review the evidence, and then don't they have to make up their minds that you deserve to be blocked before they write you a letter telling you you are blocked? A. No. They can tell me this way. Sure, they make up before their mind, sure.

Q. That is what I am talking about. A. I think they think about it before, then they sit down and write the letter and send it to me.

Q. And when they think about it, they then make the decision, don't they, that you should be blocked, then they write you a letter and tell you you are blocked,—correct? A. Yes.

Q. Now, then, once they make that decision that you are entitled to be blocked, is there any record made of it in the Swiss Compensation Office? A. No. They have a copy of their letter.

Q. And that is all? A. That is all. When I make the appeal against it, I need nothing else than this blocking, this letter, to show that I was blocked. That is like a judgment.

Q. And that letter simply notifies you that you are blocked, after the decision is made,—correct? A. Yes, sir.

Mr. Burroughs: I still object, Your Honor.

1216 The Court: Most of the grounds have been swept from under you, haven't they?

Mr. Burroughs: No, sir.

The Court: What is left?

Mr. Burroughs: If the decision was made, it is an official decision. This is nothing more than a notification that he is blocked.

The Court: That is not the way I understood his testimony.

Mr. Burroughs: Well, he just said it is an official act. Of course it is an official act.

The Court: He said evidence was considered, there was a mental determination, and the letter was written, and that that constituted the official act.

Mr. Burroughs: But the letter is written as the result of the decision.

The Court: The mental decision.

Mr. Burroughs: Well, that is the decision.

The Court: Well, you don't want to bring that in evidence, do you?

Mr. Burroughs: No, but that is the decision, and I say that is all this thing amounts to, notification from the Swiss Compensation Office that they are blocked, and that is not the best evidence.

The Court: What would be the best evidence?

1217 Mr. Burroughs: The best evidence would be the officials who made the decision that they should be blocked.

The Court: You mean their testimony?

Mr. Burroughs: Yes.

The Court: Have you any other objection?

Mr. Burroughs: Yes, I think they should be here to be cross-examined. I think it is secondary.

The Court: Overruled.

Mr. Burroughs: And also hearsay.

The Court: And what?

Mr. Burroughs: Also hearsay.

The Court: Overruled. You have offered No. 14 and 14-A, is that correct, Mr. Gordon?

Mr. Gordon: Yes.

The Court: You may read 14-A for the record.

(The documents above referred to, marked Plaintiff's Exhibits Nos. 14- and 14-A, were received in evidence.)

Mr. Gordon: Yes. Do you have the translation?

The Court: You had better read that into the record.

Mr. Gordon: I will, right now, but let them be looking at 13-A in the meantime. Go out in the hall and look at 13 and get that translation, quickly—just so quickly you don't know what happened. (Speaking to the Interpreters.)

The Court: Up to this point, 14 and 14-A have been
1218 received, and I will ask you to read in evidence 14-A, so that it will be in evidence in the record.

Mr. Gordon: Yes. 14 consists of the German letter of October 30, 1945. 14-A is the document that went with it.

The Court: No.

Mr. Gordon: Wait a minute. I have the translation of both of those.

The Court: I thought 14-A was the translation.

Mr. Gordon: No. 14-A was the thing in the envelope with the letter, you see. Now, a translation of 14, we can call 14-B, and they will go right along together.

The Court: Very well.

Mr. Gordon: And a translation of 14-A we will call 14-C. I will ask to have that marked accordingly, and then I shall read it.

Mr. Burroughs: And do I understand these documents you are now having marked, are a repetition of the ones we have just had admitted in evidence?

Mr. Gordon: They are translations of them.

Mr. Burroughs: No, no. These two are the ones that have just been admitted in evidence.

Mr. Gordon: That is right.

Mr. Burroughs: And these are the translations they have agreed upon.

Mr. Gordon: That is right. That should be marked
1219 14-B, and that 14-C.

(Plaintiff's Exhibits Nos. 14-B and 14-C were received in evidence, and so marked.)

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1220 Q. Do you know whether these gentlemen have the right to sign such letters as this?

Mr. Burroughs: I object. It automatically calls for hearsay.

The Court: You are asking him his opinion as a matter of Swiss law?

Mr. Gordon: Yes, as a matter of Swiss law.

Mr. Burroughs: But I don't think he has testified anything as to his qualifications on the law of the Swiss Compensation Office, and the authority of these individuals.

The Court: Overruled. You may answer, Doctor.

The Witness: Please ask me once more.

By Mr. Gordon.

Q. Did they, in your opinion as a Swiss lawyer,—did the gentlemen who signed these letters have authority to
1221 do so on behalf of the Swiss Compensation Office?

A. They have.

Q. Yes. Now, Mr. Wehrli, have you accounted for all of the signatures there? You spoke of two men. Are there just two signatures involved in the two letters? A. These two signatures.

Q. They are the same on each letter? A. Yes.

Mr. Gordon: All right.

Mr. Burroughs: Now, the testimony is that they have the authority to sign letters. That is as far as the authority goes.

Mr. Gordon: As I understand it, the letters are in evidence. I will now proceed to read them.

The Court: You are now reading them in evidence?

Mr. Gordon: I am now reading 14-B, which is the letter itself. (Reads, as follows:)

"Swiss Compensation Office
Zuerich
Borsenstrasse 26
Internationale Gesellschaft fur
Chemische Unternehmungen A.-G.
(I. G. Chemie)
Peter Marianstrasse 19,
Basle. "

By Mr. Gordon:

Q. Let me ask the witness: Is I. G. Chemie the
1222 former name of Interhandel? A. Yes, sir.

Q. It is the same company? A. Yes, sir.

Mr. Gordon: (Continues reading, as follows:)

"*Blockade of Payments Germany*

Zurich, Borsenstrasse 26,
30th October, 1945.

"Re: Blockade on German assets according to the resolutions of the Federal Council of 16.2./27.4./3.7.1945.

"We confirm the telegram with following text addressed under today's date to the president of your board of directors, Dr. Felix Iselin, Sternengasse 2, Basle:

'with immediate effect the Resolutions of the Federal Council of 16 February, 27 April and 3 July 1945 concerning the preliminary regulation of payments between Switzerland and Germany are declared applicable to all payments and to the disposition" (or conveyance,—the Interpreters disagreeing as to "disposition" and "conveyance" "over properties of any sort of I. G. Chemie. Letter following.'

"We are sending you enclosed a general authorization to carry on your business to its former normal scope and extent.

Yours truly,

SWISS COMPENSATION OFFICE
sigs. "

1223 Mr. Gordon: Then attached to that, in the same envelope, was the form which has been marked Exhibit 14-A. The translation thereof is Exhibit 14-C, which is as follows:

SWISS COMPENSATION OFFICE
(Name in German, French & Italian)
ZURICH

Zurich, October 30, 1945

AUTHORIZATION

The Swiss Compensation Office authorizes the Internationale Gesellschaft fur chemische Unternehmungen A. G. (I. G. Chemie), Peter Merianstr. 19, Basel, which falls under the regulations of Article 2, paragraph 2, of Federal Council's Resolution of February 16/April 27, 1945, in the wording dated July 3, 1945, to make payments within Swiss territory for salaries, expenses, taxes and for suppliers, within the present limits of normal business activity, and to dispose to this extent of its credit balances and merchandise in stock, as well as to accept payments. Payments abroad are permitted only as far as they are made by payment to the Swiss National Bank within the limits of a Clearing and Payments Agreement, which was entered into by Switzerland, the notice "payment to the debit of blocked accounts" having to be put on the first sheet, which is to be filed with the Swiss Compensation Office; other payments abroad are subject to approval by the Swiss Compensation Office.

1224 This authorization is valid only as long as a new regulation has not been set up by other executive prescriptions to Federal Council's Decree of February 16/April 27, 1945, in the wording dated July 3, 1945. The Swiss Compensation Office calls attention expressly to the ability for double payment (Article 8) and to the penal prescriptions (Article 10) of the Federal Council's Decree, which apply to improper utilization of this authorization as well.

The authorized firm or group of persons has the duty to report to the Swiss Compensation Office the total amount of all payments made under any legal title whatsoever every three months—the first time for the period running from February 17 to March 31, 1945,—payments of the same kind having to be put together and comprehended (e.g. salaries, wages, office costs, taxes, purchase of merchandise and so on) in the statement referring to this. The Swiss Compensation Office will bill for the respective fees due to it (compare Article 9 of Federal Council's Decree of February 16/April 27, 1945, in the wording dated July 3, 1945).

The answers required (crossed out in the original—"in the enclosed questionnaire)* have to be presented to the Swiss Compensation Office within 14 days.

SWISS COMPENSATION OFFICE
(two signatures)

1 Encloseure (stricken out)
Form No. 10951 a.

Mr. Gordon: Then there is a footnote: "* respec-
1225 tively your first settlement of accounts, separated in quarters and beginning with the period running from February 17 to March 31, 1945, . . ."

Mr. Gordon: Will you get those Interpreters back in here?

Mr. Hiss: They are right there.

Mr. Gordon: I think Plaintiff's Exhibit 13 has been admitted in evidence, has it not?

The Deputy Clerk: I do not have it so recorded.

Mr. Gordon: Then we offer in evidence Plaintiff's Exhibit 13, which was the other letter as to which we have had the same testimony.

The Court: Do you object?

Mr. Burroughs: I haven't seen that one, Your Honor. May I see it? Do I understand that this is another official document blocking these people.

Mr. Gordon: Let me say what this one is. Referring now to Plaintiff's Exhibit 13, that is the letter from the Swiss

Compensation Office to Interhandel, confirming the blocking, giving some reasons for the blocking and adding the right to make an appeal, or declaring the right is existing, but declaring it. We have agreed as to this being the translation of it.

Mr. Burroughs: Let me see it again, the translation, please. I don't think this letter has been identified.

1226

Mr. Gordon: Yes, it has. It was identified by Mr. Germann while he was on the stand. He testified he took it out of an envelope. It came to him.

Mr. Burroughs: Whose signatures are on there, do you know?

The Court: I am not sure. You have been back and forth. You had better do it again, to be sure about it. Was it one that was identified by this witness?

Mr. Gordon: No. Mr. Germann testified that he received this letter and opened it, took it out of the mail himself. He testified to the signatures and who they were. Dr. Wehrli can also testify as to the signatures, can't you, Dr. Wehrli?

The Witness: Yes. These are the signatures of Mr. Schwab and Mr. Ott.

Mr. Gordon: And you have already testified who they are. Now I offer this one in evidence, Plaintiff's Exhibit 13, and the agreed translation, 13-A.

Mr. Burroughs: I object to this one, on the ground that it has not been identified as being an official document of blocking.

Mr. Gordon: But he has just testified what it was. It was confirming that they were blocked, and saying that the blocking was provision and they could appeal. Isn't that right, Dr. Wehrli? A. It is confirming of the blocking and it is fixation of the date when, the time for putting in the appeal as a beginning. We have a period of 30 days for an appeal, and this period must be fixed also or the beginning could be not sure, because Interhandel get

1227

first a telegram then a letter confirming, and here with this they fix the beginning of this time for the appeal.

Mr. Burroughs: I still object, on the grounds as heretofore stated.

The Court: Mr. Gordon, is this one of those you showed to the witness before lunch? Is this No. 13?

Mr. Gordon: Yes, sir. I showed this to him before lunch. I showed it to Mr. Germann after lunch, and now we are showing it to him again. The delay has been because of the translation.

The Court: One may have been a late translation because you didn't take up after lunch with the same one.

Mr. Gordon: Let me explain that, if Your Honor please. I showed him before lunch two that went to Dr. Iselin. It would have been pretty hard to fool with his deposition, which didn't have it. Mr. Germann was right here. We could present the other two just as well. Therefore, we have gone ahead with the two we have now.

The Court: These are not the ones identified before
1228 lunch?

Mr. Gordon: Thirteen is, but two of the others are not. Eleven and twelve, I think, have never been introduced, have they?

The Deputy Clerk: They have not been received. They were marked.

Mr. Gordon: Eleven and twelve I havn't brought forward, and I think I will just let those go and stick to these, in order to save time.

The Court: What is the testimony as to Mr. Ott's position?

Mr. Gordon: Mr. Ott was—Mr. Wehrli, you had better say again.

Mr. Burroughs: He didn't say. Mr. Germann said it.

The Court: Do you know who Mr. Ott is?

The Witness: Yes.

The Court: What was his position?

The Witness: He is director of the Compensation Office.

Mr. Burroughs: Not what he is, what he was when that letter was written in 1945.

The Witness: I do not know if he was at this time director or—(The witness consults with Interpreter de Graffenried.)

Dr. de Graffenried: One of the collaborators having power to sign.

1229

The Witness: In any case he had the power to say. I think he was the director at this time, too.

Mr. Burroughs: What is the difference between that and chief clerk?

The Witness: Beg your pardon?

Mr. Burroughs: What is the difference between that and Chief Clerk?

(The witness and Interpreter de Graffenried consulted.)

The Witness: I do not know what the chief clerk is.

Mr. Burroughs: Mr. Germann testified Mr. Ott was the chief clerk, as I recall it.

Mr. Gordon: I do not remember that.

The Court: If he doesn't know what that is—

The Witness: May I explain the position of Mr. Ott?

Mr. Burroughs: Now, in 1945, we are interested in.

The Witness: As you like,—1945. In 1945 he had the right to sign letters like this.

Mr. Burroughs: What was his position?

The Witness: He was director, or a man with the power to sign letters like this, and to handle,—yes,—to work in a way binding the Swiss Compensation Office.

Mr. Burroughs: I move that all of that be stricken. He doesn't know what his duties were, what his title was,—he was a director or a man who had the right—that is obvious.

1230

The Court: Overruled. Dr. Wehrli, does that paper in your hand, Plaintiff's Exhibit 13, represent the official act of the Swiss Compensation Office?

The Witness: Yes, sir.

The Court: Very well. Do you offer it?

Mr. Gordon: I do, sir.

The Court: You object?

The Court: The objection is overruled. It will be received.

Mr. Gordon: The translation has been agreed upon.

The Court: That will be received.

(The documents above referred to, marked Plaintiff's Exhibit Nos. 13- and 13-A, were received in evidence.)

Mr. Gordon: With the Court's permission, I will ask Mr. de Graffenried to read this, because it has his handwriting on it. That is the agreed translation.

(Thereupon, Mr. de Graffenried read, as follows:)

SWISS COMPENSATION OFFICE
ZUERICH
Borsenstrasse 26.

Telephone @ 7 27 70 & 7 59 30

Telegraphic address
CLEARINGSTELLE
BY REGISTERED MAIL
To the DIRECTION of the
Industrie-Gesellschaft fur
Chemische Unternehmungen,

1231

Basle.

Zurich, 15th November, 1945.

We refer to our letter in which we confirmed to you our telegram with regard to putting your company provisionally under the Resolutions of the Federal Council concerning blocks on German assets in Switzerland and in addition herewith inform you of our decision in writing.

On the instructions of the Federal Department of Public Economy, your company is subjected to the Decrees of the Federal Council concerning the blocking of German properties in Switzerland, in the meaning of Art. 9, clause 3 of the Decree of the Federal Council of 16.2.1945 as amended on 27.4.1945.

The provisional putting under the blocking provisions is due to the fact that in the opinion of the Federal authori-

ties the examination report of the Compensation Office has not produced enough facts to be able to destroy all misgivings regarding the complete severance of your company from the I. G. Farben Industrie A.-G., with which it is indisputable that it was formerly closely connected. Moreover, new facts have come to the knowledge of the Compensation Office which induced them to supplement the investigation. In view of these circumstances your company had to be provisionally subjected to the blockade in the meaning of the stipulation cited above.

1232 You may appeal against this decision and the 30-day period for appeal commences from the receipt of this letter.

Yours truly,

SWISS COMPENSATION OFFICE
(Signatures)

1233 By Mr. Gordon:

Q. Dr. Wehrli, did you continue to represent Interhandel after these letters were received which we have called Plaintiff's Exhibits 13 and 14? Did you continue to represent them in regard to their controversy with the Swiss Compensation Office? A. Yes, sir.

Q. For how long a time? A. Oh, my mission was terminated after we had won the case.

Q. And when did you win the case? A. If my recollection is right, the decision of the Supreme Court was on January 6, '48.

Q. 1948? Now, in your opinion as a Swiss lawyer, was Interhandel blocked from the time of the receipt of these letters in November, 1945, until that decision in 1948? A. Yes, sir.

Q. In your opinion, during that period from November, 1945, down until 1948, could Interhandel lawfully have given an option to Remington Rand or anyone else to sell its stock in General Aniline & Film Company without the consent

of the Swiss Compensation Office? A. No, not without the consent.

Q. Was such consent ever given by the Swiss Compensation Office? A. No.

1234 Q. If Interhandel had attempted to give such a contract or had made an offer to sell the stock, would such an offer have been enforceable, in your opinion?

Mr. Burroughs: I object.

Q. (By Mr. Gordon—continuing) As a Swiss lawyer?

The Court: I would like to hear your grounds.

Mr. Burroughs: I withdraw it.

The Court: You may answer.

A. Will you please repeat the question?

Mr. Gordon: Read the question.

(The Reporter read the question as follows:

"Q. If Interhandel had attempted to give such a contract or had made an offer to sell the stock, would such an offer have been enforceable, in your opinion as a Swiss lawyer?"

A. The answer is "no."

Q. (By Mr. Gordon) I show you a book which I will have marked for identication as Plaintiff's Exhibit—what is the next number?

The Clerk: 15.

Mr. Gordon: Plaintiff's Exhibit 15.

(The book referred to was marked Plaintiff's Exhibit 15 for identification.)

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1244 The Court: I will receive it for the sole purpose of showing that "gentlemen's agreement" is in usage among lawyers, business men, bankers and men engaged in commerce, commercial enterprises.

Mr. Gordon: As having a certain meaning.

The Court: As in use. No, I won't go beyond just that, that it is in use. I understood the witnesses for the intervener contended it was never in use, that it was unknown.

1245 Mr. Burroughs: In law.

Mr. Gordon: They went pretty far.

The Court: Well, I will let it go in for that purpose and that limited purpose only. Otherwise I sustain the objection.

(The book referred to, previously marked Plaintiff's Exhibit 15 for identification, was received in evidence for the limited purpose stated by the Court.)

Mr. Burroughs: And all of that translation may be stricken?

The Court: All stricken, with the exception of the use of the words "gentlemen's agreement," for that sole purpose.

By Mr. Gordon:

Q. Dr. Wehrli, I asked Dr. Schiess a question on his examination, and I would like to ask you the same question of your opinion as a Swiss lawyer.

Reading page 691 of the transcript I said this:

"Dr. Schiess, let us see if I understand your testimony. I am going to try to put it very simply. As I understand it, as you just stated, and as the result of your testimony recently, it is this"—would you like to follow this, Dr. Wehrli, page 691? (Handing a transcript to the witness.)—

"Assuming that Interhandel was provisionally
1246 blocked, making that assumption, and assuming that Dr. Iselin, Mr. Germann and Dr. Sturzenegger on behalf of Interhandel, nevertheless offered to transfer the General Aniline & Film shares, and if they were transferred, it is my understanding that your testimony is that for that Dr. Sturzenegger, Mr. Iselin and Mr. Germann could have been sent to jail, and that the proceeds of any such sale would be put into the Swiss National Bank, but that, nevertheless, if they were imprudent enough to make such an offer, the offeree could accept and compel performance. Is that your testimony?"

And he answered "That is my testimony."

Now, Dr. Wehrli, I would ask you how, as a Swiss lawyer, you would answer that same question? A. I am sorry, but my answer would be the contrary of what Dr. Schiess said.

Q. What is your answer? A. That to compel performance would not be possible.

Q. There is one other thing that I overlooked in running through my notes. It is not on this precise point but it is a final question.

Will you look at the Swiss Civil Code, Article 8? A. Yes, sir.

Q. Look at the English translation. A. I have no English translation.

1247 Q. Didn't we have that Swiss Civil Code translation for it? A. It is very short. May I go on with the translation, and Dr. Schiess will correct me?

Mr. Gordon: Yes, go ahead.

A. (Reading:) "Article 8. Where the law does not decide it otherwise, the burden of proof of alleged fact lies on the person who will base his right on the fact."

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1275 Cross examination

By Mr. Burroughs:

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1296 Q. Now, what is your conception of a gentlemen's agreement? A. A gentlemen's agreement is an agreement in which the parties say that they will do something, but that they will not make a legal binding contract or agreement, that they will exclude the possibility of a lawsuit, of a suit on performance of this agreement.

• • • • • • • • • •

1343 Q. Now is it your contention that Interhandel came under the May decree? A. My personal opinion?

Q. Yes. A. My personal opinion, and I think the opinion of Interhandel, too, is that Interhandel was not under the decree concerning blocking, and not under the decree concerning announcement. But the Swiss Compensation Office regarded Interhandel as suspicious to have German influence. They were blocked provisionally, and if my recollec-

tion is right, the Compensation Office asked Interhandel afterwards to announce the assets, just based on this decree of May 1945.

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1346 Q. Now in 1945 what assets did Interhandel have in the United States? A. The main assets were the G. A. F. shares or stocks. I do not know exactly the expression—but their interests.

Q. Now, the Government of the United States had taken over those shares in 1942, had they not? A. I believe that they had taken some of the assets.

• • • • • • • • • • •

1363 Q. Are we to understand that the provisional blocking is a sort of a secret arrangement under the Swiss law? A. No, it is not secret, but the Compensation
1364 Office didn't give to third persons, for instance, a list (speaks to Interpreters) a list of provisionally blocked corporations.

Q. You mean by that, then, that no one could go to the Swiss Compensation Office and find out who was on the blocked list. Is that correct? Unless they were personally involved in the company? A. Yes. I think if you go there and it is a definite blocking, you will get the answer, and I think if you go to the directors you can get also the right answer.

Q. But if it is a provisional blocking, they wouldn't tell anybody else about it, is that right? A. I think if you go to the directors and tell them why you need to know this, they would give you a correct answer, but if you only write a letter to them, "Is this (so and so) corporation blocked" and it is only a provisional blocking, they wouldn't say this corporation is not free.

1365 Q. Doctor, there was no difference between provisional blocking and general blocking, was there, except with respect to time? A. For Interhandel there was no difference.

Q. I am not talking about Interhandel. I am talking about provisional blocking and general blocking. Is there any difference between the two except with respect to time? A. Except in respect of time and the question if it would be lifted or not lifted, it is the same.

Q. Would they give out information to third parties with respect to general blocking? A. I think yes.

Q. But not as to provisional blocking? A. Yes.

Q. They would give out information as to provisional blocking? A. Generally, no.

Q. Then there is a distinction between general blocking and provisional blocking? A. Concerning the outcome, the information to third persons.

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1367 Q. Doctor, I hand you a booklet dated January, 1946, apparently published in Bern. Will you examine that and tell us what it is, please? (Handing a book to the witness.)

1368 A. This is like a gazetteer, periodical, publication of the Society of Juris of Bern.

Q. Is that an official publication in Switzerland? A. For the Canton Bern I would say yes.

Q. I ask you to refer to page 29 and tell us whether or not you see the title of a case there? Do you see the title, Doctor? A. Yes. It is not the title, but it is a short resume.

Q. Will you turn to page 30, and I will ask you whether or not you agree with this language of the Court. A. Shall I read it through?

Q. Let me read it and you follow me, if you will:

"The ration regulations only involve the transaction in rem." A. I am sorry. Where are you starting?

(Dr. Schiess indicated a place in the pamphlet to the witness.)

Q. Are you ready? A. Yes.

Q. "The ration regulations only involve the transactions in rem and not the transactions in personam directly."

"That means it is not forbidden to make a sales contract without ration coupons with respect to rationed products,
but it is forbidden to deliver the product to the buyer
1369 without simultaneously surrendering the coupons. The
legal validity of the contract in personam could only be questioned if from the very beginning it would have provided for delivery of such products without ration coupons."

Do you agree with the language of that statement?

A. If I agree with the translation?

Q. Do you agree with that language that I just read to you? A. With the translation or with the argument?

Q. Both. A. The translation I think, generally speaking, is right. Let me add, this translation of in personam and in rem, that is not a strong translation. I see what you mean by it, but I would say it is always the difference between verfuegen and verpflichten.

Q. I was afraid we were going to get to those two terms. I have been trying to avoid them.

What does the word verfuegen mean? A. To dispose of something.

Q. To transfer, to do something, to transfer, convey? A. also.

Q. To hand over, in other words? A. Also.

Q. What is verpflichten? A. To go into an obligation, to make an obligation.

1370 Q. In other words, it is to make a contract to do something in the future? Isn't that right? A. No, that is not.

Q. What is the difference between verfuegen and verpflichten? A. The one means to do it actually now, in this moment.

Q. Which word is that? A. Verfuegen. To make something which gives results, and important results, important meaning from the legal point of view. Verpflichten is to bind himself to conclude an obligation, a contract.

Q. In the future? A. No, the contract may be concluded now or fulfilled now. It has nothing to do with the question today or in the future.

Q. But the word verpflichten does not contemplate an immediate transfer, does it? A. It is not necessary. It can do it. It is possible, but it is not necessary.

Q. Can you tell us in a few simple words the difference between verfuegen and verpflichten?

Mr. Gordon: He has done that twice. I object.

Mr. Burroughs: He hasn't done it to my satisfaction. I don't know about yours.

1371 The Court: You may try it the third time.

The Witness: I will try to do it.

By Mr. Burroughs:

Q. Just give us an example, then. Maybe that will be simpler. A. Take our example from this morning. You will sell me your automobile. We make a contract. We sign a contract, or we may conclude our agreement concerning it. Now, this agreement, that is the obligation, that is the verpflichten. If we sign this contract, in Swiss law you are always the owner of your car until you give me your car. That means we need two things: we need our agreement to sell and to buy.

Q. That is verpflichten? A. That is verpflichten. And we need the disposition, that you give me your automobile. If you give it, or if you say to the man who has your automobile: "Now, hand it over, or give it now" to me, then you will dispose of your automobile, and that is the verfuegen.

Q. In other words, the contract to sell you my car is verpflichten; when I drive my car to your office and step out and hand you the keys and the title of the car, "Here it is. It is yours," that is verfuegen? A. That is the accomplishment of verfuegen.

Q. Now, will you refer to the Swiss blocking laws

1372 of February, 1945, which are Exhibit RR 46? (Handing the exhibit to the witness.) A. Yes.

Q. Do you find there any prohibition against making a contract to do something? In other words, do you find the word "verpflichten" used there? A. The word "verpflichten," the term "verpflichten" is not in this.

Q. Do you find the word "verfuegen" in there? A. Yes.

* * * * * * * * * *

Redirect examination

By Mr. Gordon:

Q. Dr. Wehrli, a little while ago Mr. Burroughs was questioning you about a letter that Dr. Schiess had gotten from the Compensation Office, and if I understood your answer correctly you were saying that one reason you didn't put much account on that letter was that Interhandel had gotten a letter, and then Mr. Burroughs objected that the letter was the best evidence. Now, I show you a letter from the Compensation Office to Interhandel with reference to this same matter. Is that the letter you had in mind? A.
1373 Yes.

Q. And does that appear to be a translation of it? You don't have to read the whole thing now, but just enough to indicate in a general way that it is. A. Yes.

Mr. Gordon: Mr. Burroughs, would you like to look at those?

Mr. Burrough: No, I think not.

Q. (By Mr. Gordon) Will you please read this letter to the Court?

Mr. Burroughs: I object.

The Court: Do you wish me to see it?

Mr. Gordon: Yes, if the Court please. This is a little hard for you to rule on it without seeing the substance. Could you do the same thing as you did with Mr. Burroughs' letters, glance at the translation and then we will see whether it is admissible or not. (Handing papers to the Court.)

Let me first ask that the letter in German of January 23, 1950, from the Swiss Compensation Office to Interhandel, be marked for identification as Plaintiff's Exhibit 16.

(The letter referred to was marked Plaintiff's Exhibit 16 for identification.)

Mr. Gordon: And the translation of the same letter

1374 be marked as Plaintiff's Exhibit 16-A.

(The translation referred to was marked Plaintiff's Exhibit 16-A for identication.)

Mr. Gordon: Now, I think that these letters were provoked or induced or brought about, whatever may be the right word, without anything insidious about it, by Mr. Burroughs' cross-examination of this gentleman. He got right up to the point where Mr. Burroughs was asking him the basis of his opinion, asking him about the other letter, its effect on him and so forth, and he spoke of these letters, and then Mr. Burroughs stopped him at that point, merely on the ground that the letters are the best evidence. Well, they are, and I offer them in evidence, if the Court please.

Mr. Burroughs: My objection is twofold. No. 1, they have not been properly identified; No. 2, they do not purport to be official documents such as the other blocking regulations or orders which Your Honor permitted in the other day.

The Court: Your letter did not get in.

Mr. Burroughs: No, sir.

The Court: Do you wish to be heard further?

Mr. Gordon: No, sir.

The Court: I sustain the objection.

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1375 Q. There is one more thing I want to ask you, Dr. Wehrli. If I understood your testimony in answer to Mr. Burroughs correctly just before lunch, I think he asked you this question and you gave him this answer, and tell me first if this is correct. I think he asked you if Interhandel offered to sell its General Aniline & Film stock to Remington Rand, and made this offer in 1946, when it was blocked,

according to your testimony, and if the offer was that the stock would be sold only after the United States had freed the stock and returned it, and then only after the Swiss Compensation Authorities had ended the blocking, whether that would be legal, and I think you answered that such an offer would be legal under the Swiss law. Now, did you follow me? Am I right about that? Is that what he asked you and is that what you said? A. Yes, if also the Swiss blocking was lifted.

Q. If it was part of the condition of the offer that not only the United States blocking be lifted but that the Swiss blocking be lifted before there would be any sale, and that was all part of the deal, it is your opinion as a Swiss lawyer that that would be legal and would not violate the blocking law? Is that right? A. Yes.

Q. Now, let me vary that just a little bit.

Suppose you had the same offer, that is, Interhan-
1376 del offered to Remington Rand that they would sell the stock to Remington Rand that they owned in General Aniline & Film, if and after the United States lifted its vesting and returned the stock to Interhandel, but there was nothing said in the offer about there being a condition that the Swiss blocking would be lifted, would that be legal under the Swiss law, and would it be a binding offer? A. No, in that case it would be void.

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1377 By the Court:

Q. As I understand it, a declaration of willingness under Swiss law is equivalent to an offer? Is that correct? A. Yes, Your Honor.

Q. And an offer is binding upon the offeror? A. Yes.

Q. Without consideration? A. Without consideration, Yes, Your Honor.

Q. Now, did the blocking laws forbid declarations of willingness to accept offers to purchase blocked goods or stock or bonds or property of any kind? A. To offer?

Q. Yes. A. I would say no. Generally speaking
1378 that would be possible.

Q. Therefore the blocking laws did not forbid the making of an offer to sell blocked property? A. No, in this way: you can't say, because that would be the attempt of disposition. You must add in this case that you will offer to sell when the blocking is lifted.

Q. That would be legal? A. That would be legal.

Q. But if you made an offer, to take effect when the blocking was lifted, that would be legal? Is that correct? A. That would be legal.

Q. But it would be illegal to make an offer or to accept an offer to purchase when the stock was returned? A. The returning of the stock has nothing to do with the blocking.

Q. Then there could be a valid contract to dispose of blocked property if and when the blocking was lifted, but there could not be a valid contract to dispose of blocked property in the future without regard to the blocking being lifted? A. Yes, sir.

Q. Is that what you say? A. Yes, Your Honor.

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1388 **Walter Germann** was recalled as a witness for and on behalf of the Plaintiff and, having been previously duly sworn, was examined and testified as follows:

Mr. Gordon: I think Mr. Germann has already been sworn, if Your Honor please.

The Court: Yes.

Direct examination

By Mr. Gordon:

Q. Will you please state again your full name, Mr. Germann? A. Walter Germann.

Q. And where do you reside? A. In Basle, Switzerland.

Q. And of what country are you a citizen? A. I am a citizen of Switzerland.

Q. Are you a native born Swiss? A. Yes, sir.

Q. So you have been a citizen of Switzerland all of your life? A. Yes, sir.

1389 Q. Mr. Germann, do you have any connection with Interhandel? A. Yes, sir.

Q. Will you please tell the Court what your positions have been with Interhandel at different times, and what your position is now? A. I was appointed the manager of Interhandel in early 1945. It was in March, 1945. And I have been the manager ever since. And in November of 1948 I was elected a member of the Board of Directors.

Q. What are your duties as manager? A. I have to carry out the daily current business of the Interhandel Corporation, and one of my special tasks is to watch over the fate of our assets which are blocked in foreign countries, like over here in the United States.

Q. Mr. Germann, without going into it at great length, just tell the Court in a word or two the nature of the business of Interhandel. A. Interhandel is a holding corporation which has holdings mainly in the chemical field and its main participation has been since 1928 and 1929 its participation in the General Aniline & Film Corporation, New York.

The Court: I do not quite understand that. You mean that is its principal asset?

The Witness: Yes, sir. Yes, Your Honor.

1390 The Court: All right.

By Mr. Gordon:

Q. I think in the testimony of Mr. Germann, something was said about some of the certificates of the General Aniline & Film being in Switzerland and some being in the United States. Can you clear that up?

Mr. Burroughs: Did you say in the testimony of Mr. Germann?

Q. (By Mr. Gordon) Dr. Sturzenegger? A. Yes, sir. To the best of my recollection all of the B shares which are outstanding, namely, 2,050,000 shares are actually located

in the United States. As to the A shares, 454,948 shares are located in Switzerland, namely, 300,000 directly in our own custody, and 154,948 shares in the custody of the banking firm, H. Sturzenegger and Company.

The remaining 676 shares are also deposited in a safe deposit account with the firm, Sturzenegger and Company, but H. Sturzenegger and Company had deposited these shares over here in the United States; 500 shares with the firm Hutz & Joslin in New York and 176 shares with the banking firm Brown Brothers, Harrimann & Company.

Q. Mr. Germann, did you mean 176 or 176,000? A. 176 shares.

Q. And when you said 500 that is— A. 500 shares.

1391 Q. And the 600 is 600 shares. You gave a figure of 660. A. 676, meaning 500 plus 176.

Q. Now when you say shares, you mean the physical certificates? A. Yes, sir.

Q. Is Interhandel a corporation? A. Yes, sir.

Q. Organized under what law? A. It is organized under the laws of Switzerland and it is incorporated in Basle and registered in the Register of Commerce of Basle.

Q. What is the full name of the corporation? A. The full name in French is Societe Internationale Pour Participations Industrielles et Commerciales S. A., and the German name is Internationale Industrie- & Handelsbeteiligungen A. G.

Q. Is that the same corporation as was formerly called Chemie? A. Yes, sir, but its name was changed on December 19, 1945.

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1393 Mr. Gordon: If the Court please, I would like to read in evidence certain parts of the minutes of Interhandel of May 14, May 16, May 18, 1946, which is Remington Rand Exhibit 17-AA, which is already in evidence, but which has not been read to the Court.

The Court: Very well.

Mr. Gordon: Do you want to follow this?

1394 Mr. Burroughs: Yes.

Mr. Gordon: You take this.

Mr. Burroughs: We have our copy.

Mr. Gordon: (reads as follows:)

Minutes
of the
95th meeting of the board of directors
of the
INTERNATIONALE INDUSTRIE- & HANDELSBE-TEILIGUNGEN A.-G.

held on 16th and 18th May, 1946, on the business premises of the company.

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1400 By Mr. Gordon:

Q. Now, Doctor Sturzenegger is the gentleman who has testified in this case? A. Yes, sir.

Q. And you are the Walter Germann mentioned? A. Yes, sir.

Q. And General Director Richner is of the Union Bank of Switzerland, the gentleman that you had already talked to? A. Yes, sir.

Q. Now, will you state to the Court what happened next in reference to any talks that you and Dr. Sturzenegger had with General Director Richner and other persons representing Remington Rand, between that time and the 4th of July? A. We outlined our thoughts along the lines of the resolution of our Board to Mr. Richner.

Mr. Burroughs: May I inquire when this took place?

The Witness: This took place immediately after May 18th.

Mr. Burroughs: Fix the time.

The Witness: I could not say whether it was on May 18th, the same day, or the day afterwards. And according

to the instructions we had received from our Board, we made it clear to Mr. Richner—

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1401 The Witness: We, according to the instructions we had received from our Board, we submitted to Mr. Richner the proposal as follows—and I would like to point out one difference of translation which does not appear in the translation of the minutes.

Mr. Burroughs: I object to that at this time.

By Mr. Gordon:

Q. These minutes have been agreed to, Mr. Germann, so we cannot change those. A. Yes.

Q. I mean the translation has been agreed to. Just say what happened at the meeting? A. We told Mr. Richner that upon the fulfillment of the outlined prerequisities, namely, the release of the Interhandel assets, the lifting of all discrimination against Interhandel, the members of its Board, its main shareholders and where they were corporations again their shareholders and members of their boards; and the second point, after the return, or deblocking of all properties of these people and corporations, then Interhandel would be willing to accept an offer from the people represented by Mr. Richner, namely, Remington Rand, an offer to buy our GAF participation for the price which at that point was about 28 million dollars, 60,000 fully paid Interhandel shares, 30,000- 50 per cent paid shares and a release of—no, I think that is the end of it.

1402 This proposal was given with a time limit, with the idea that the prerequisites as well as the offer would have to be fulfilled within a certain time, which at that moment was the 30th of June, 1946.

Q. Did Mr. Richner or Mr. Wehrli—let me ask you first: Mr. Richner had an associate, Mr. Wehrli, did he not? A. Yes, sir.

Q. Did he take part in the discussions? A. He took part in these discussions. It was only the very first meeting in

which Mr. Richner was alone. In all other meetings as I remember correctly, Mr. Ulrich Wehrli was with Mr. Richner.

Q. Now, when you say we told this, you mean you and Dr. Sturzenegger? A. Dr. Sturzenegger. After this declaration, Mr. Richner—

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1403 Q. What followed that conference of May 18th and 19th?

The Court: You have not asked him—perhaps you do not care to—but you have not asked him what Mr. Richner said.

Q. (By Mr. Gordon) All right. What did Mr. Richner say? A. Mr. Richner told us that he would transmit this proposal to his clients, and that he would tell us their reaction.

Q. Did you or Mr. Sturzenegger or Mr. Richner or Mr. Wehrli say anything else that was material in this matter at that time? A. I cannot remember any special happening.

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1404 Q. Well, let me ask you: When was the next meeting, and what took place, please? A. I could not fix the date of the next meeting, but we had practically daily meetings for the rest of May and early in June, 1946.

Q. Now, what occurred at those meetings? A. In those meetings, Mr. Richner told us first that the price about which we were talking was not agreeable to Remington Rand, and as a result of that we had very difficult discussions about the price.

Q. Well, then what happened next? A. Next, early in June, I think it was on June 4th, we reached a meeting of our minds regarding the price. That is to say, at that point we told Mr. Richner that instead of the figures which were mentioned on May 18th or May 19th, we would, with the same conditions and prerequisites, be agreeable to a price of 25 million dollars and the other terms, namely, the

1405 Interhandel shares and the dividends and bank accounts.

This was a meeting which was attended on our side again by Dr. Sturzenegger and myself only. And Mr. Richner said "This is quite an important point. We would like to know that we understand each other, and that this understanding is backed up by the other members of your Board." And then we arranged for a meeting in Basle on June 6th.

Q. Now, what took place at the meeting on June 6th, 1946? A. The meeting of June 6th, 1946 was attended on the side of the representatives of Remington Rand by Mr. Richner, and Mr. Ulrich Wehrli, and on our side by Dr. Felix Iselin, my father, August Germann, Dr. Hans Sturzenegger and myself. And in this meeting the understanding was—

Q. You will have to say what was said. You understand? A. Yes. I am coming to this now. At the outset it was made clear to Mr. Richner that—

Mr. Burroughs: I object to that, too.

The Court: You must state what was said, and then you can state how it was said.

The Witness: Yes, sir.

The Court: But do not make conclusions.

The Witness: Yes, sir. We declared to Mr. Richner and Mr. Wehrli—and if I say "we", it was done by Mr. Felix Iselin and by Dr. Hans Sturzenegger—that it was

1406 our understanding that Remington Rand would endeavor according to their representations to have our assets in the United States released, and that if the following prerequisites would be fulfilled, namely, the Interhandel assets returned to us, all discrimination against Interhandel, its members of the Board, its main shareholders and where they are corporations their shareholders and members of their board, and if all the properties of these persons and entities were released, then Interhandel would be willing to accept an offer, which would be submitted in duly licensed form and which would provide for the following

conditions,—the price to be 25 million dollars payable in Swiss francs converted at the official rate of exchange in Basle, or in gold ingots deliverable in Switzerland, probably to the Swiss National Bank.

This was the price. The goods to be sold by us was our entire General Aniline participation. And our willingness to do all this was subject to a time limit, during which all the prerequisites and the offer would have been submitted—would have to be submitted. And this time limit was fixed as of June 30th, 1946.

There was another time limit, namely, June 18th, 1946, and this was given to the Remington Rand representatives in order to give them the opportunity to tell us by that time whether the understanding as outlined by us would be agreeable in principle to Remington Rand.

1407 By Mr. Gordon:

Q. Was there anything said at that time about the return of your bank accounts in the United States, and dividends? A. Yes, sir. I thought I had included that in the release of all our assets.

Q. All right. What did Mr. Richner and Mr. Wehrli say at that time? A. They told us that they were satisfied with this declaration, and that they would report back to their principal.

Q. Now, I will ask you, did Dr. Richner show you at that time or shortly thereafter, any recapitulation that he had made of the conversation? A. No, sir.

The Court: That was Dr. Wehrli's recapitulation.

Q. (By Mr. Gordon) Or did he show you one that had been made by Dr. Wehrli? A. No, sir.

Q. Have you ever seen any such recapitulation until you came to America to try this case? A. I have not seen any recapitulation made by Mr. Richner or Mr. Wehrli up to my arrival over here now for the trial.

Q. When I say for the trial, I mean for the original depositions. A. For the depositions, yes.

1408 Mr. Gordon: We will now read RR Exhibit No. 17-BB, the minutes of July 4th, 1946. I will ask Mr. Hiss to do this.

(Thereupon, Mr. Hiss read, as follows:)

MINUTES
of the
96th meeting of the board of directors
of the
INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 4th July, 1946, on the business premises of the company.

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1409 The Court: What was the date of that—the 17th day of July?

Mr. Gordon: July 20th, 1946.

The Court: The last one—I didn't hear the date.

Mr. Gordon: July 4th.

The Court: July 4th. Thank you.

(Thereupon, Mr. Hiss read RR Exhibit 17-CC, as follows:)

1410 MINUTES
of the
97th meeting of the board of directors
of the
INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 20th July, 1946, on the business premises of the company.

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1411 Q. Mr. Germann, did you and other representatives of Interhandel at about the time of these min-
1412 utes of July 20th, have any conversations with Mr. Archibald and Dr. Schiess? And will you tell the Court when these happened, and what occurred? A. Yes, sir. There

was one meeting in Zurich with Mr. Archibald, Mr. Schiess, Mr. Wehrli, Mr. Richner and Mr. Nemzek, and on our side Dr. Sturzenegger and myself.

At that time the Remington Rand representatives had come back to the original idea which Mr. Richner had outlined to us in early February of 1946.

Mr. Burroughs: I move that all of that be stricken, if the Court please, as not responsive, and, also, because of the fact that he characterizes, rather than tells us what the representatives said.

The Court: Read the question.

(The question referred to was read by the Reporter, as follows:

"Q. Mr. Germann, did you and other representatives of Interhandel at about the time of these minutes of July 20th, have any conversations with Mr. Archibald and Dr. Schiess? And will you tell the Court when these happened, and what occurred?")

The Court: Overruled. You may continue. But I have not yet heard when these things happened.

The Witness: I thought I testified that the first meeting happened on July 19th.

1413 The Court: The meeting with these gentlemen?

The Witness: Yes, Your Honor.

The Court: Then I did not hear it. That is the date?

The Witness: Yes, Your Honor.

The Court: All right. You may proceed, and state what occurred—not your conclusions.

The Witness: The Remington Rand representatives asked us to grant them an option on the preferred shares of Interhandel, and they asked us to grant Remington Rand a power of attorney to represent Interhandel in the United States.

In the discussion which followed, they made the further offer that, besides the agreement which they wanted to have regarding the preferred shares, they would be willing to open a tender for the Swiss common shareholders in the event that the deal which Remington Rand had in mind could be carried through.

We went even into some discussion about the framing of the agreements for such a solution, but Dr. Sturzenegger and myself made it clear to the Remington Rand representatives—

Mr. Burroughs: There we go again with that "made it clear".

The Court: Sustained. You may state what you said.

The Witness: Dr. Sturzenegger and myself told the
1414 Remington Rand representatives that we were not authorized to discuss or to conclude an option regarding the preferred shares.

The Court: Of Interhandel?

The Witness: Of Interhandel. And we told them that we would take up this matter with our Board and with the preferred shareholders themselves.

As we had our general meeting on July 22nd, any further meetings with the gentlemen of Remington Rand were postponed until July 23rd. But in the meantime, our Board had resolved not to take into consideration—

Mr. Burroughs: Had this taken place at the meeting?

The Witness: Pardon?

Mr. Burroughs: Had this taken place at the meeting with the Remington Rand representations, where your Board had concluded?

The Witness: No. This took place at the meeting which was related in the Board minutes which were read to the Court by Mr. Gordon, or Mr. Hiss.

Mr. Burroughs: I move that be stricken.

The Court: Now, Mr. Germann, did you state to the representatives of Remington Rand what your Board had done, and, if so, state what you said, not what had occurred concerning which they might know nothing.

The Witness: Yes, Your Honor. On July 23rd, Dr. Sturzenegger and myself met again with the Remington
1415 Rand representatives, namely, Mr. Archibald, Mr. Schiess and Mr. Ulrich Wehrli, in Basle, in Mr. Schiess' office. And we told them that our Board and our

preferred shareholders had resolved not to grant an option on the preferred shares, and not to give a power of attorney to Remington Rand to represent Interhandel in the United States.

Then the Remington Rand representatives pressed us to define again our understanding of the declaration made to Mr. Richner on June 6th, 1946.

We told them that we were not willing to reduce on paper our declaration, which was regarded as an oral gentlemen's agreement, but after being pressed again by Mr. Schiess and Mr. Archibald, we read through with them a skeleton draft which they had made themselves of a recapitulation, what they called a recapitulation of the declarations to Mr. Richner, and we pointed out to them certain things which we did not like.

The Court: Don't you think it would be wise at this point to have the exhibit to which he is referring, indicated in the record, Mr. Gordon?

Mr. Gordon: Yes, sir. Will you please give me your Exhibit 5, your Exhibit 4, your Exhibit 47, and your Exhibit 6. That includes it all. I will find it for you in just a minute. That is the "gruppe" of the exhibits that have to do with this matter.

The Court: I assume he is referring to a certain
1416 statement which has already been discussed in evidence. Now, if he is, I think the record ought to show it at this time. If he is not, we ought to get the statement, if it is available.

Mr. Gordon: That is just what I am trying to do, if the Court please.

By Mr. Gordon:

Q. I show you Remington Rand Exhibit No. 4—

The Court: Well, now, that is the recapitulation—

Mr. Gordon: Yes, sir.

The Court: Which he has said he never saw until he got to this country?

Mr. Gordon: Oh, no, no, if you will pardon me, if the Court please, the recapitulation he never saw until he got to this country is that recapitulation, one that has never gone into evidence.

The Court: I see.

Mr. Gordon: The recapitulation he is talking about now is the recapitulation made by Archibald and Wehrli. Isn't that right?

The Witness: Yes, sir.

The Court: Maybe you could pick it out, so he will know what you are talking about.

Mr. Gordon: That is what I am going to try to do.

By Mr. Gordon:

Q. I show you Remington Rand Exhibit No. 4, and
1417 Remington Rand Exhibit No. 47, entitled, respectively, a Recapitulation in French and a Translation of the same, and ask you if this is the matter that you were talking about.

Mr. Gordon: There are so many of these, it takes me a minute.

The Court: I understand. I want to be clear in my mind what he is talking about, because there are several recapitulations involved in this case.

Mr. Gordon: This is the Archibald-Schiess recapitulation.

The Witness: This is the recapitulation about which I was talking right now.

The Court: Remington Rand Exhibit No. 4?

The Witness: Remington Rand Exhibit No. 4, and the translation, Remington Rand Exhibit No. 47.

The Court: All right.

By Mr. Gordon:

Q. Was it written in French when they showed you the draft? A. Yes, sir. The main drafting had evidently been done by Mr. Archibald, and he insisted on it being in French.

Q. Now, state what occurred when they showed you the draft of the recapitulation? A. After some talk that we

did not want this recapitulation to supplement or to change the oral declaration made to Mr. Richner, we started
1418 talking about the wording of the recapitulation. And I remember one point certainly which I pointed out to Mr. Archibald in which I did not like his wording. On the first page, paragraph 3, it reads "as essential conditions for the acceptance of such an offer" and so on, which is a literal translation of the French original text.

I pointed out to him that in our statements to Mr. Richner we had not talked about an essential condition, but even of a stronger word, namely, a prerequisite, in German voraussetzung. But he was not willing to have his draft changed in this respect.

There was another point about which we were in evident disagreement, namely, the enumeration of the people whose discrimination had to be lifted, and what properties had to be returned.

The recapitulation mentions only the preferred shareholders and goes on afterwards that all other persons or companies who have been discriminated against because of their relation to the Interhandel group, the discrimination must cease completely. But in our declaration to Mr. Richner, I pointed out to Mr. Archibald we had been talking about the main shareholders, including some of the main common shareholders, but we were not willing to mention the names of these main common shareholders to the Remington people, and, therefore, these names on this clause did not go into this paper.

Q. Mr. Germann, I now show you Remington Rand
1419 Exhibit No. 5, which is a letter to Dr. Sturzenegger. It is just two or three lines. Will you just translate that?

Mr. Gordon: Is that agreed?

Mr. Hiss: It is in evidence.

Mr. Burroughs: Yes.

Mr. Gordon: I will read the translation. This is on the letterhead of Dr. Walter S. Schiess. (Reads:)

"Basle, 23rd July, 1946.

"Dr. Hans Peter Schmid
"Dr. A. Ruggiero-Maire
"Lawyers and Notaries
"Freiestrasse 111
"Basle.

"Dr. Hans Sturzenegger,
"St. Jakobstrasse 46,
"Basle

"Dear Dr. Sturzenegger:

"I am sending you enclosed the "recapitulation of the declaration made to Mr. Richner' as we drew it up this morning, and remain,

"Yours,

"Dr. Walter S. Schiess."

Mr. Gordon: Now, accompanying that letter, Mr. Burroughs, was the declaration. That is correct?

Mr. Burroughs: That is right.

Mr. Gordon: That indicated their agreement—I mean the recapitulation.

1420 Mr. Burroughs: Recapitulation.

Mr. Gordon: The next one is Remington Rand Exhibit No. 6. Do we have an agreed translation of that, or did we disagree?

Mr. Burroughs: We disagreed, and they were both withdrawn.

By Mr. Gordon:

Q. Then, Mr. Germann, will you kindly translate that letter, Remington Rand Exhibit No. 6, to Dr. Schiess, from Dr. Sturzenegger?

The Court: We will have a five minute recess.

(Thereupon, a short recess was taken.)

1421 Q. Mr. Germann, will you translate this very short Remington Rand Exhibit No. 6? A. The letterhead is:

"DR. HANS STURZENEGGER
St. Jacob Strasse 46, Basle 2

July 24, 1946

"Dr. Walter S. Schiess,
Basle.

Dear Dr. Schiess:

"I acknowledge receipt of your letter of the 23rd inst., and thank you best for the recapitulation of the declaration made to Mr. Richner which was enclosed.

"We had agreed at our yesterday's meeting that our collaboration in the drafting of the recapitulation had only the meaning to help you reporting to your principals, but that between us now, as before, only the oral declaration of readiness given to Mr. Richner is essential, which shall not undergo any further definition by the above-mentioned working.

"I present to you my best regards.

H. Sturzenegger."

Q. That is Dr. Hans Sturzenegger to Dr. Schiess.

The Court: Haven't we already had a translation of that in evidence?

Mr. Gordon: No agreed translation, if the Court
1422 please. They put in what they said was their translation. This is our translation. There is very little difference.

The Court: I could not detect any.

Mr. Gordon: It is very hard to. You have to be a Byzantine Logothete almost, to detect the difference, but nevertheless the gentlemen say there is a difference, and I am putting ours in.

Mr. Hiss: I want the record to show that there is no translation in evidence of Remington Rand's Exhibit No. 6.

Mr. Burroughs: I am perfectly willing to accept Mr. Germann's translation.

By Mr. Gordon:

Q. Mr. Germann, have you stated to the best of your recollection everything that occurred in the conversation that you and Dr. Sturzenegger had with Mr. Archibald, Dr. Schiess and Mr. Wehrli at that period? A. I think the recollection about what we said is complete. I have to relate one more saying which they told us. They asked us at that time very definitely for a firm extension of our agreement, and we told them that we would take up the matter with our Board and would report to them again.

Q. Let me ask you specifically two or three direct questions.

Mr. Archibald has testified that in these conver-
1423 sations the representatives of Interhandel referred to an option as having been already granted. Is that so or not?

Mr. Burroughs: You mean did Mr. Archibald make that reference?

Mr. Gordon: No, I am not asking him if Mr. Archibald made that reference. I am saying Mr. Archibald made the statement, and giving him an opportunity to agree with it or disagree with it.

Mr. Burroughs: I object to that as calling for a conclusion of this witness, which I don't think he has been qualified to give.

Mr. Gordon: It is not a conclusion, Mr. Burroughs. It is what occurred. I am asking him generally to state what occurred. I am asking him generally to state what occurred at the meetings. He has so done. I now would like to call his attention to certain particular statements made by the other side as to what occurred at the meetings, and ask him if those statements are correct or are not.

The Court: You object?

Mr. Burroughs: If he is simply going to ask him whether Mr. Archibald made a statement or whether this was said or that was said, I have no objection.

The Court: I understand that is his purpose, is it not?

Mr. Gordon: Yes, that is the purpose of the ques-
1424 tion.

Mr. Burroughs: I didn't get it that way at first.

By Mr. Gordon:

Q. The question is: at either or any of these meetings that you have described, that you and Dr. Sturzenegger had with Mr. Archibald, Mr. Schiess and Mr. Wherli, did you or Dr. Sturzenegger say to them at any time that an option had already been granted? That is my question. I mean an option on the General Aniline & Film shares. A. No, sir.

Q. You have testified as to conditions of the understanding, that is, that the General Aniline & Film stock and the other properties would be returned to Interhandel before the offer was to be made and accepted. Now, let me ask you specifically if at these meetings that we have been talking about, you or Dr. Sturzenegger ever said that if Remington Rand accepted the offer before the time limit ran out, and bound themselves to carry out the terms of the offer at some time in the future, that would be a good acceptance? Did you or Mr. Sturzenegger ever say that? A. No, sir.

Q. Or anything to that effect? A. No, sir.

The Court: Whose testimony are you reading now?

Mr. Gordon: I am now reading from the testimony of Mr. Archibald at page 932. And there is a little sugges-
1425 tion of it at page 912 and page 913.

By Mr. Gordon:

Q. Remington Rand Exhibit 17 DD is a circular resolution of the Board of Directors dated July 25 and July 26. Let me ask you, Mr. Germann, this is called a "circular resolution," whereas everything else, all the others, are called "minutes." Will you explain to the Court what a circular

resolution is, according to Swiss practice? A. A circular resolution is a form of resolution provided for by our law and by the by-laws of our corporation. The circular resolution is drafted in written form and then submitted to all members of the Board, and if they are in agreement with the resolution they sign it, and when all members have been approached and signed, the resolution is taken. And the by-laws provide that if a member of the Board is in disagreement with a resolution, that member can ask that the very question must be dealt with in an actual board meeting.

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1427 Q. This document is marked Plaintiff's Exhibit 3 for identification. It has not yet been put in evidence. Have you ever seen that before, Dr. Germann? A. Yes, sir.

Q. Under what circumstances and when? When did you first see it? A. I saw this document first on July 29, 1946, in Basle, when Mr. Ulrich Wehrli visited Dr. Sturzenegger and myself, and we received him at Dr. Sturzenegger's meeting room in his bank, and Mr. Wehrli handed this paper to us.

Q. That is the Mr. Wehrli who is associated with Mr. Richner? A. Ulrich Wehrli.

Q. Is that correct? A. Yes, sir.

Mr. Gordon: We now offer this in evidence, Mr. Burroughs, this document. Mr. Wehrli did not deny that he had seen it; it looked familiar to him, but he wasn't sure about it.

Mr. Burroughs: Mr. Wehrli hasn't been on the witness stand.

Mr. Gordon: Dr. Ulrich Wehrli, the witness. We read his deposition.

Mr. Burroughs: And this was shown to him at that
1428 time?

Mr. Gordon: Yes.

Mr. Burroughs: He had no recollection of it whatsoever.

Mr. Gordon: Yes, it seemed familiar to him, but he neither

admitted nor denied that he had seen it. We now have the direct evidence that it was given to Mr. Germann by him.

Mr. Burroughs: And may I ask this question: was this the paper, actually the paper that was handed to you, or was it in another form?

The Witness: To the best of my recollection, yes.

Mr. Burroughs: It is marked "Copy."

The Witness: Yes. This is not surprising.

Mr. Burroughs: Is that the one that was physically handed to you, or was there another one from which this copy was made?

The Witness: My best recollection is that this is the very paper Mr. Ulrich Wehrli handed us.

Mr. Burroughs: I object to it, if Your Honor please. This appears to be a copy of something, what I do not know. It has no signature on it, and I don't think it is material to this proceeding at all.

Mr. Gordon: A copy of the telegram.

Mr. Burroughs: That is your surmise.

The Court: When he handed it to you did he make
1429 any statement to you or did he simply hand it to you and walk away?

The Witness: He made the statement that Mr. Leo Nemzek, the Vice President of Remington Rand, had received this cable from the United States, and that they wanted us to know the contents of this cable.

The Court: You still object? Will you state your grounds?

Mr. Burroughs: There is no signature on it. We don't know where it came from or anything about it. It doesn't purport to be signed by anybody connected with Remington Rand.

The Court: Objection overruled. It may be received in evidence.

(The paper referred to, previously marked Plaintiff's Exhibit 3 for identification, was received in evidence.)

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1431 By Mr. Gordon:

Q. Mr. Germann, do you know who the Wilson is that is referred to in that telegram? A. Yes, sir.

Q. Was he doing any work for your Interhandel at that time? A. He was our lawyer.

Q. Where was this Wilson when the telegram was given to you? A. He was here in the United States.

Q. Had he ever been to Switzerland up to that time, to your knowledge? A. No, sir.

Q. Did you know him yourself? A. Not personally.

Q. Had you ever talked to him? A. Not up to that time. Excuse me, I could not tell whether we already had the opportunity to talk over the telephone, but just the only matter which could possibly have been discussed would have been his possibility to come to Switzerland.

Q. But you had never seen him up to that time? A. No.

1432 Q. So that at that moment you had no knowledge personally whether he was a total loss or not, did you? A. No, sir.

Mr. Burroughs: I don't recall what date the witness said this paper was handed to him.

The Court: He said the 29th, didn't you, of July?

The Witness: Yes, July 29, 1946.

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1434 By Mr. Gordon:

Q. While Mr. Wilson was there, was he introduced to Dr. Schiess, Mr. Richner—any of the rest of them? A. Yes, sir.

Q. And conversations were had? Is that right? A. Yes. We had two meetings with the Remington Rand representatives.

The Court: Will the reporter read the question and answer?

(The Reporter read the record as follows:

"Q. While Mr. Wilson was there, was he introduced to Dr. Schiess, Mr. Richner—any of the rest of them? "A. Yes, sir.

1435 "Q. And conversations were had? Is that right?

"A. Yes. We had two meetings with the Remington Rand representatives.")

Mr. Gordon: Minutes of the meeting of Interhandel October 15, 1946.

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1440 Q. Was the letter prepared under date of Decem-
1441 ber 2, 1946, referred to in these minutes, actually sent to Mr. Nemzek? A. Yes, sir.

Mr. Gordon: The next point in the chronological story is the Nemzek letter of December 21, I think, Plaintiff's Exhibit 1. That has already been read in evidence. The Court will recall the very extravagant claims as to what Remington Rand was doing.

The minutes of the meeting of January 16, 1947, of the Board of Directors of Interhandel, Remington Rand Exhibit II.

By Mr. Gordon:

Q. Mr. Germann, was this form of agreement, which is Remington Rand's Exhibit 52 which I have just read, ever signed by or on behalf of Interhandel? A. No, sir.

Mr. Gordon: Excerpts from the minutes of the Board of Directors of Interhandel, February 5, 1947.

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1453 By Mr. Gordon:

Q. Mr. Germann, this meeting was on March 8, or March 10—well, you recall the arrival in March of representatives of Remington Rand from America?

Q. Who came? A. In March, 1947, Mr. Shorten and Mr. Garey arrived in Switzerland.

Q. Am I correct in saying that March 10 was the first date you met them? A. Yes.

Q. Will you state to the Court who was present at that meeting, what was said on both sides, to the best of your recollection? A. At the meeting of March 10, 1947, there were present on Remington's side Mr. Shorten, Mr. Garey, Mr. Richner, Mr. Ulrich Wehrli, Mr. Schiess, Mr. Nemzek; and on our side, Dr. Sturzenegger and myself. We met for the first time Mr. Shorten and Mr. Garey, and when
1454 the meeting opened, Mr. Garey made a long statement in which he developed again the necessity for Remington Rand to get an option on the General Aniline and Film Stock. He told us that, according to the views of his principal, Remington had spent enough time and money on the plan to carry out the Americanization of G.A.F., and that they had helped us enough to get more concrete compensation for what they did, and he said that they needed the option agreement as it had been submitted to us in the draft which had been submitted to us in January, 1947.

Q. That I have just been reading from? A. We then tried to explain to Mr. Garey and Mr. Shorten that it was difficult for us to bind ourselves unilaterally without having any assurance that Remington would take up whatever rights they would get.

We pointed out to them that the possible sale of G.A.F. was a very vital matter for us, involving about 80 per cent of the assets of our Corporation, and that we just simply could not come to a binding agreement with them without having them committed too. To that statement by us he explained to us that Remington Rand could not bind itself to buy the G.A.F. participation, because under the Assignment of Claims Act they were not allowed to buy into a claim against the United States, and that any such assign-
1455 ment of claim would be invalid.

We told Mr. Garey and Mr. Shorten that we understood his statement, but for us too, under such circumstances it would be very difficult, if not impossible, to bind ourselves more than by the gentlemen's agreement which was in existence the summer of 1946.

With this discussion going back and forth, the atmosphere became quite heated, and both gentlemen, Mr. Garey and Mr. Shorten, pointed out to us that they wanted to make it very clear to us that they had to get the option according to their draft, or that they would call off all further negotiations. We told them then that we thought it necessary to talk to other gentlemen of our group, and we suggested that they should meet our president, Dr. Iselin, too. Thereupon it was agreed that we would meet again with the Remington Rand representatives in Zurich on March 14, 1947.

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1456 Direct examination (Continued)

By Mr. Gordon:

Q. Mr. Germann, you had completed your description of the meeting of March 10th, and you were about to state what occurred on March 14th. Now I will ask you if you had a further meeting between the representatives of Interhandel and representatives of Remington Rand? State when this occurred, who was present, and what happened? A. We had a second meeting on March 14th, 1947 at the Union Bank of Switzerland, in Zurich. At that meeting were present, on the Remington side Mr. Shorten, Mr. Garey, Mr. Nemzek, Mr. Richner, Mr. Ulrich Wehrli, Dr. Schiess and Dr. Henggeler, and on our side, Dr. Iselin, Dr. Sturzenegger, and myself.

Q. Now, what occurred? State what the parties said at that meeting? A. At that meeting Mr. Garey stated again the wishes of Remington Rand, and he did it—he addressed himself to Dr. Iselin, whom he met for the first time on that day. He talked again about the necessity for Reming-

1457 ton Rand to get the option agreement which had been submitted to us in draft form in January of 1947, and he explained to us again why it had to be an option agreement and not a mutually binding contract.

He told us again about the Assignment of Claims Act which prohibited the assignment of a claim against the United States.

We tried again to explain to Mr. Garey and to Mr. Shorten our viewpoints, that we could not bind ourselves unilaterally, but we met with very little comprehension on their side.

Mr. Graye, as well as Mr. Shorten, grew rapidly angry, and told us that unless they would get the option they would better stop the discussions and go home. The atmosphere grew that heated that the gentlemen who represented Remington Rand left the Board room, and Mr. Richner suggested to us that we would consult and confer then with our own group what could be done.

We discussed the matter in our group. Dr. Sturzenegger and myself explained certain phases of the statements of Mr. Garey and Mr. Shorten, to Mr. Iselin, who had had some difficulty in understanding what was said. But we agreed, the three of us, that we could not change our attitude.

We then told the gentlemen of Remington Rand that we would like to go on with the discussion, and we
1458 told them that the three of us could not change our attitude, but that we would be willing to take the matter up with our full board, and that we would try our utmost to meet them, to meet with their wishes as far as it could be possibly done by us.

And we told them, too, that we would be willing,—the three of us,—to recommend to our Board a firm extension of the gentlemen's agreement, but that we had to take up the matter in a formal Board meeting.

There was some discussion, too, about the plans which our corporation had to send me to the United States. We had expressed to them our desire to do that step, which had been recommended by our lawyer, Mr. Wilson.

They told us that such a trip would be of no use, because it would not be possible for me to learn anything else than what they had already told us.

We told them that we would take up this matter with our Board, too, and we agreed with them, on the request of Mr. Garey, that we would give our reaction to the whole situation—the reaction based on the resolution to be taken by our Board, in a letter which we would send them.

Q. Now, is that everything that was said on each side, to the best of your recollection? A. That is all I recall at this point. There was at the end a mutual feeling that we would try on both sides to come to an understanding.

1459 We asked them to understand our situation, and we told them that we would do our utmost to reach,—to meet with their wishes. And at the end there was some kind of a peacemaking after the very heated meeting. On the initiative of Mr. Garey, we shook hands, on this understanding, that both sides would try to go along again and would do their utmost to come to an understanding.

Mr. Gordon: Remington Rand Exhibit No. 17-L-L are the minutes of the board of directors of Interhandel of March 17, 1947, which we will read at this point.

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1463 Mr. Gordon: That completes the minutes of March 17, 1947. Now, the letter referred to in the minutes of March 17, 1947 to General Manager Richner from the representatives of Interhandel has been introduced in evidence, in the same terms as has just been read in

1464 the minutes, and in German that constitutes Remington Rand Exhibit No. 7. The English translation constitutes Remington Rand Exhibit No. 29. As I say, that letter that has just been read is part of these minutes, so I will not read the letter again.

By Mr. Gordon:

Q. After that letter was sent to Mr. Richner, there was a further meeting on March 19th, was there not? A. Yes, sir.

Q. Now, I will let you have this letter before you as you describe what happened at that meeting. And will you please tell us—

The Court: Hadn't you better refer to it by the exhibit number?

Mr. Gordon: Yes. Remington Rand Exhibit No. 7, and the translation thereof, Remington Rand Exhibit 29, are handed to the witness.

By Mr. Gordon:

Q. Now, will you please state who attended the meeting, and what was said on each side at that time? A. The meeting was a dinner which we gave for the gentlemen of Remington Rand who were staying in Basle, namely, Mr. Shorten, Mr. Garey, and Mr. Schiess. On our side the dinner was attended by Dr. Iselin, Dr. Sturzenegger, and myself.

After the dinner, we talked about our mutual
1465 plans. We on our side talked about my trip to the United States, about when I was to leave. We told the gentlemen from Remington Rand that I would be leaving Switzerland on March 21st.

There was some discussion about Mr. Garey leaving, too. They told us that Mr. Shorten would stay in Switzerland to wait for my return.

Then Mr. Garey took out of his pocket a piece of paper which contained a draft of translation of our letter dated March 17th, 1947 addressed to Mr. Richner. And he told us that they had made out this draft for the gentlemen who were speaking English only, and that they would like us to look it over and to tell us whether it was an accurate translation.

We told them that we would do so, but we pointed out to them that the German text would have to be considered as the original text..

We went through the document, and we told them that we thought the paper was a fair translation of what we had said in our letter dated March 17th.

Then Mr. Garey told us that he would like very much to have reduced in writing some further terms of the gentlemen's agreement, and after some consultation between the three of us, we told him that we would be willing to do so.

And he told us what these items should be, and when looking at this English translation, I recognize my own handwriting at the bottom of the paper, in which I
1466 wrote down the items which Mr. Garey told us he

would like to have confirmed in writing, namely,

"1. The understanding regarding the price;

2. That the option—I would like to quote the exact words I was writing down—"option in writing", and

3. During G. A. "(meaning gentlemen's agreement)" no negotiations."

After this discussion, if I recall correctly, we did not further discuss business matters, the meeting being mainly a social one.

But on the next day, namely, March 20th, 1947, we wrote such a letter, and according to the wish of Mr. Garey we addressed this letter to Mr. Shorten, who was considered as the main representative of Remington in Switzerland, and we wrote the second letter in English.

Q. March 20th, 1947? A. Yes, sir.

Q. Tell us, when did you first tell Garey and Shorten that you expected to take this trip to America? Do you remember that? Was that first told at the dinner meeting? A. No. We certainly talked about it already in the March 14th meeting.

Q. Now, referring to Mr. Garey's testimony on pages 785 and 786, did you or Dr. Sturzenegger or Dr. Iselin, say

1467 to Mr. Garey that until you came back from America, the option that they had, or any option, would not be cancelled, or that the gentlemen's agreement would not be cancelled, or that any understanding would not be cancelled, and that during that period of time Interhandel had the right to exercise the option by making an offer to purchase?

Mr. Burroughs: You mean Remington Rand.

Mr. Gordon: Remington Rand. I beg your pardon. I am sorry, Mr. Burroughs. You will get that way some time —Anno Domino.

By Mr. Gordon:

Q. Is that too confused? Should I say that over again? A. Yes. I would like to have you do so.

Q. Let me start again. At this dinner meeting, did you or Dr. Sturzenegger or Dr. Iselin say to Mr. Garey, or to any other of the representatives of Remington Rand, that during the period that the understanding was in effect, Remington Rand had the right to exercise the option by making an offer to purchase? A. No.

Q. Now, did you say anything like that? A. No, sir.

Q. Or did Dr. Sturzenegger? A. No, sir.

Q. Or Dr. Iselin? A. No.

1468 Q. Did anyone representing Interhandel say that the understanding would not be terminated during the period that you were in America? A. Not with these words. The understanding, according to our declaration of June 6th, 1946—

Mr. Burroughs: I object.

Mr. Gordon: But he answered "not with these words", and then he was going to explain what was said. I think that is the right way to do it.

The Court: You certainly may ask it, but he was giving an answer that is not responsive. He was volunteering.

By Mr. Gordon:

Q. Well, was anything of that sort said, and, if so, what? A. We wrote to the Remington representatives that the gentlemen's agreement would be valid firmly until April 15th, 1947, and cancellable from then on only on fifteen days' notice.

Q. During that dinner meeting, did you, or Dr. Sturzenegger or Mr. Iselin, ever call the understanding that you had with Remington Rand, an option? A. No, sir.

Q. Did you, or Dr. Iselin or Mr. Sturzenegger to your knowledge, ever call it an option at any of the meetings that you had with representatives of Remington Rand? A. No, sir.

1469 Q. Now, I call your attention to the letter, Mr. Garey's translation of Remington Rand Exhibit No. 29, on which you said you wrote something at the bottom

at his suggestion. Read this third thing that you wrote. A. "3. During G.A., no negotiations."

Q. You wrote that at his request? A. Yes, sir.

* * * * * * * * * *

Q. What is your best recollection as to whether Mr. Garey used the words "gentlemen's agreement"? A. I cannot recall that.

Q. You returned this paper to him with this on it? A. Yes.

Mr. Burroughs: I object. He hasn't said he did that at all.

Mr. Gordon: Oh, that is undisputed.

Mr. Burroughs: I don't know that it is.

1470 Mr. Gordon: It is a paper you got, and you brought it here.

By Mr. Gordon:

Q. What became of this paper, Mr. Germann—referring to Remington Rand Exhibit No. 29—after you had written this on it? A. One of the three gentlemen of Remington Rand took it with him. I could not tell you who of the three did it.

Q. During the conversation at the dinner, were the words "gentlemen's agreement" used, to your recollection? A. Yes, sir.

Q. And during the earlier conversations on March 10th, were the words "gentlemen's agreement" used, to your recollection? A. Yes, sir.

Q. During the period from June up to March—see, from June, 1946 to March, 1947—were there from time to time conferences between representatives of Interhandel and representatives of Remington Rand, Dr. Richner, and others? A. Yes.

Q. During those conferences, were the words "gentlemen's agreement" ever used? A. Yes, sir.

Q. Once, or frequently? A. Frequently.

1471 Q. And referring to what? A. Referring to the understanding based on the June 6th, 1946 meeting.

Q. Now, when the words "gentlemen's agreement" were used, did Dr. Richner ask you what was meant? A. No, he knew exactly what we meant.

Q. Did Dr. Wehrli ask you what was meant? A. No, sir.

Q. Did Archibald ask you what was meant? A. No, sir.

Q. Or Dr. Schiess? A. No, sir.

Mr. Burroughs: Now, I move that part about Richner be stricken as a purely voluntary statement on his part,—"he knew exactly what was meant."

Mr. Gordon: Oh, yes.

The Court: The motion is granted.

Mr. Gordon: That is, those words: "he knew what was meant"?

The Court: Yes.

By Mr. Gordon:

Q. Did Mr. Garey ask you what was meant by the words: "gentlemen's agreement"? A. No, sir.

Q. Or Mr. Shorten? A. No, sir.

1472 Q. Or Mr. Nemzek? A. No, sir.

* * * * * * * * * *

Now, the letter to Mr. Shorten, to which reference has just been made, is Remington Rand Exhibit 18. May I have that? That is the letter of March 20, 1947: (Reads:)

Basel 2 * * March 20, 1947.
Mr. Bill Shorten,
Vice-President Remington
Rand, Inc.,
Hotel Trois Rois,
B a s l e.

Dear Sir,

We beg to refer to our letter dated March 17th addressed to Mr. Fritz Richner, General Manager, Union Bank of Switzerland, Zurich, regarding our negotiations with Remington Rand Inc.

Complying with the desire expressed by you yesterday we gladly confirm:

1) that the option, of which we were speaking, would be in written form;

1473 2) that the Gentlemen's Agreement has among others the meaning

a) that we will not discuss the price we mutually agreed upon;

b) that we will not take any initiative to start negotiations with other private interested parties (on the other hand it seems to be obvious that we must be free to receive proposals by third parties).

We hope that this supplementary statement meets with your wishes and beg to remain, dear Sir,

Yours truly,

(Interhandel) etc.

By Mr. Gordon:

Q. That is the letter you said was sent to Mr. Shorten. Is that right? A. Yes, sir.

Q. It is the letter you referred to? A. Yes, sir.

Q. There was no other letter? A. No, sir.

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1476 Q. All right. Mr. Germann, did you go to America? A. Yes, sir.

Q. March 23rd, 1947—is that the right date? A. That is the date of my arrival over here.

Q. And how long were you in America on that trip? A. On that trip I stayed in the United States till April 12th.

Q. Now, during the trip to America, did you have the pleasure of meeting Mr. Rand? A. Yes, sir.

Q. Will you please tell what happened? A. I met Mr. Rand first on March 28th, 1947.

1477 Q. Where was it, and what happened? A. This was in Mr. Rand's suite at the Mayflower. Mr. Wilson and I went there on their invitation, and we met Mr.

Rand, Mr. Garey, Mr. McNamara, Mr. Nemzek. That is what I recall. That was a luncheon.

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Q. (By Mr. Gordon) What occurred at that meeting, what else? A. This first luncheon was mainly a social affair. We discussed very little business together. But we agreed that we would meet again on the same day around five or six o'clock.

Q. Well, did you meet on the same day— A. Yes.

Q. —at five or six o'clock? A. Yes, sir.

Q. Tell us what was done, and what happened? A. On the Remington side, Mr. Rand, Mr. Garey, Mr. McNamara, Mr. Nemzek, Mr. McCracken and Congressman Cox.

Q. And what happened? A. It was a—we had cocktails together. The first part was again more of a social affair.

After about half an hour, Mr. McCracken and Mr.
1478 Cox left, and then we started talking about our problems.

Mr. Rand developed to me his thoughts about the necessity for him to get an option, and I explained to him that it was necessary according to the resolution of our Board for me to get some kind of a proof that the program which Remington had outlined to us would be feasible.

He said that he would be willing to try to give me some kind of a feeling, but that this would be very difficult to do, and that it was impossible for Mr. Wilson to be present at some meetings which I might possibly have with the Remington people together with Government officials or other people of high standing.

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1490 Mr. Gordon: Now, the next step is the minutes of the board of directors of Interhandel, Remington-Rand Exhibit 17-MM:

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1496 Q. May 7th, to which you refer in your cable to Becker, is the date that your notice period would expire, would it not? A. It expired on May 6th at 12:00 o'clock p. m.

Q. So, after you had given the notice to Remington-Rand terminating the gentlemen's agreement as
1497 of May 6th, you were prepared to deal with Becker on May 7th? Is that right? A. To negotiate; yes, sir.

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1498 A. Yes, sir; I arrived over here on the 25th of April, 1947.

Q. How long did you stay this time? A. That time I stayed till May 9, '47.

Q. Did you see Mr. Rand on that day? A. Yes, sir.

Q. And at what place? A. I called up Mr. Rand on the telephone shortly after my arrival over here, and I told him that I would be anxious to explain to him the attitude of our board. He told me that he agreed to a meeting, and I went up to New York to see him on May 2nd or May 3rd. I met him at the Plaza, where he was staying at that time. From there we went over to the Savoy Plaza to pick up Mr. Schiess, who was in New York at the same time.

Q. That is this gentleman who testified in this case? A. Yes, sir.

Q. Dr. Schiess? A. Yes, sir.

Q. Swiss lawyer? A. Yes. We then took a car and went out to Mr. Rand's private home in Darien, Connecticut, and then we went down to the executive office of Remington-Rand, at Rockledge in Stamford, Connecticut. This
1499 was late in the morning of that day, and before luncheon Mr. Rand introduced Dr. Schiess and myself to several vice-presidents of Remington-Rand. I remember Mr. Rumbles, Mr. Ross, Mr. Knapp, I think, and others, and we had luncheon with the executives of Remington-Rand.

After luncheon I went with Mr. Rand alone, first to what I think was his office in the building, and there I explained to him what had been the attitude of our board, namely,

that we were still anxious to cooperate with Remington-Rand, but that my work over here had resulted in the experience that the American Government was not agreeable to either the option or any other special agreement with any particular private American parties, and that the American Government wanted the General Aniline to be disposed of by public sale, and that these were the reasons, mainly, the result of our contact with the Government officials, which induced us to abandon the plan to work in the direction of an option or a sale contract, but that if it would be agreeable for Rand too, we would like to cooperate in the future to find some other solution which would be agreeable to the American Government, especially to the Attorney General.

Mr. Rand told me again that this was hardly feasible for them, and he tried to convince me again that we should
1500 follow their suggestions to come to a formal option agreement, but I could not follow on this thought of his.

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1503 The Court: Will you fix the date of your visit to Stamford, when you had this discussion with Mr. Rand in his office, and later went to another office where Mr. Schiess joined you?

The Witness: I think I recollect it was May 2nd, maybe May 3rd, 1947.

By Mr. Gordon:

Q. Are you sure it was before the 15 days had expired? A. Yes, sir.

Q. Now, I would like to refer to Mr. Rand's testimony at page 159 and ask this witness certain questions about it. Did you on that occasion ask Mr. Rand to give Interhandel a release of any claim that Remington-Rand might have against Interhandel in connection with the understanding between the companies?

Did you understand that, Mr. German? A. Yes, and my answer is "No."

Mr. Burroughs: Who was present, if I may inquire, Mr. Gordon?

Mr. Gordon: Who was present? No one.

Mr. Burroughs: But you are asking about a conference, and I would like to know who was present.

Mr. Gordon: There were various persons present at different times. No one was present when this happened
1504 because it didn't happen.

By Mr. Gordon:

Q. Did you tell Mr. Rand on the occasion of this visit to him at Darien on May 2nd that Interhandel needed a release from Remington-Rand in order to carry through negotiations with a syndicate? A. No.

Q. Did you on that occasion tell Mr. Rand that you were negotiating with a syndicate? A. No.

Q. Did you on that occasion tell Mr. Rand that you wanted Remington-Rand to become a participant in a syndicate? A. No.

Q. Did you on that occasion tell Mr. Rand that you would not tell him who the members of the syndicate were until he had given you a signed release from Remington-Rand in proper form? A. No.

Q. Without relying on the exact words, did you say to Mr. Rand anything that was substantially like what I have just asked you? A. Regarding a release?

Q. Yes. A. No.

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1510 Mr. Gordon: Minutes of May 17, 1947, Interhandel board of directors, Remington Rand Exhibit 17-PP.

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1517 Q. Mr. Germann, these two letters that were just read, that were in the minutes, were sent to Mr. Richner, were they not? A. Yes, sir.

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1521 Q. Now, Mr. Germann, I show you what purports to be a letter from Interhandel to American Aniline

and Chemical Company—this has not been initialed—and I ask you if you have seen this before, and under what circumstances, and what happened to it? (Handing a paper to the witness.)

Mr. Burroughs: What is that attached to it?

Mr. Gordon: Envelope attached.

A. This is a letter on the letterhead of Interhandel, dated June 16, 1947, addressed to American Aniline and Chemical Company, Inc., 165 Broadway, New York 6, New York, over the signature of Dr. Iselin and myself.

Q. (By Mr. Gordon) What did you do with the letter? A. This letter was posted on June 16—17, acording to the stamp, it arrived in New York, and I find stamped on the envelope: "Return to writer, unknown. Not in directory. Trinity Station."

Q. Did you get it back again in that way? A. It came back to Switzerland on August 16, '47.

Mr. Gordon: I offer that letter and envelope in evidence as Plaintiff's Exhibit with the next number, 24.

(The letter referred to was marked Plaintiff's Exhibit No. 24 for identification.)

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1528 PROCEEDINGS

Mr. Gordon: If the Court please, at the conclusion yesterday afternoon, we offered in evidence Plaintiff's Exhibits Nos. 24 and 24-A, and it was my understanding that they were admitted in evidence, and the Clerk so indicated on her record. But the Reporter simply indicated that they were marked for identification.

Mr. Burroughs, I think, will agree that they were introduced in evidence yesterday afternoon, and were admitted in evidence. I would like to have that corrected on the record.

Mr. Burroughs: That is my recollection.

The Court: Very well.

Mr. Gordon: That is 24 and 24-A, the letter of June 16, 1947, and the envelope in which it was sent.

(The documents above referred to were thereupon again received in evidence as Plaintiff's Exhibits Nos. 24- and 24-A.)

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1543 By the Court:

Q. Let me ask a question or two. Is this an accurate summary or statement of Interhandel's declaration to Mr. Richner and Dr. Wehrli on June 6, 1946, namely, that Interhandel declared that it would in the future be ready and willing, or ready or willing, to accept an offer to purchase for $25,000,000 its GAF shares after and on condition that they were returned, and the other conditions fulfilled—and by other conditions I mean the return of the money in the bank and the lifting of discriminations, et cetera. A. (Witness hesitates).

Q. Would you like it read back to you? A. No, Your Honor. I think the time limit which we gave at all
1544 times was somewhat of the essence.

Q. Well, I meant to say in the future within the time limitations. A. Yes, Your Honor. And if it is clearly understood that the conditions to be fulfilled by Remington were prerequisites, then I think this is a good summary of our understanding.

(The previous question was thereupon read by the reporter, as follows:

"Let me ask a question or two. Is this an accurate summary or statement of Interhandel's declaration to Mr. Richner and Dr. Wehrli on June 6, 1946, namely, that Interhandel declared that it would in the future, within the time limitations, be ready and willing, or ready or willing, to accept an offer to purchase for $25,000,000 its GAF shares after and on condition that they were returned, and the other conditions fulfilled—and by other conditions I mean the return of the money in the bank and the lifting of discriminations, et cetera.")

The Witness: May I state again that if the conditions mentioned are considered as prerequisites, to be fulfilled before the offer was made, then this statement reflects our understanding.

Q. Well, I stated after and on condition that the
1545 stock was returned, or released and the other conditions fulfilled. A. Yes, sir.

Q. Then that appears to you to be an accurate statement of the declaration? A. Yes, Your Honor.

Q. Now, wherein in that declaration is Remington required to transmit the $25,000,000 within the time limit? A. I do not think that the actual payment was necessarily within the time limit. The offer was to be made within the time limit, and that was the reason why on July 25, 26, in that circular resolution, we asked them to have their offer equipped with a guarantee by a Swiss bank for the payment of the $25,000,000.

Q. Then the time for the payment of the $25,000,000 was not definitely agreed upon? A. It could be reasonably later.

Q. Then you were in error when you stated to Mr. Burroughs a few minutes ago that the $25,000,000 under the original agreement would have to be in Basle in the form required by June 30th? A. Yes, Your Honor, I was in error, because Mr. Burroughs frequently used in the pre-trial depositions the expression that they would have all in one bag, the $25,000,000 and all, and we would have the stock and we would exchange the bags. But the closing of
1546 the deal, I think, may have been nicely done within the time which we had given for the offer to be made.

Q. Were any representations made to you by Dr. Wehrli of the Swiss Bank, or Mr. Richner, or Mr. Nemzek or anyone else representing or purporting to represent Remington-Rand, that those conditions could reasonably be fulfilled —and by those conditions I am using the definition I previously gave you,—on or before June 30, 1946. A. No. For that date, it was clearly understood between all of us that that was a very short time limit, but we started immediately

talking about the possibility of extension and the formula we found soon was the 15 days notice, which ran, after all, for eleven months before it was cancelled.

Q. First, there was an extension until September 30, 1946, was there not? A. Yes.

Q. And then did the formula of the 15 days notice apply until the meeting in March? A. Yes, Your Honor.

Q. Then there was an extension to April 15th of a certainty, and thereafter cancellable on 15 days notice? A. Yes, sir.

Q. Now, why do you say 15 days notice, whereas all
1547 these documents that I have read speak of 14 days notice? A. That is a difference of language. When we talk in German, we talk about a two week period with 14 days, and if we talk in French, as we did with Mr. Archibald, we say quinze, which is 15 days, and afterwards we did not want to equivocate, so we used the longer term which was ever used.

Q. Did Mr. Richner or Dr. Wehrli of the Swiss Bank make any representations to you as to whether they represented Remington-Rand, or whether they were simply intermediaries in order to try to bring parties together? A. They did not represent to us to have a formal power of attorney to act for Remington-Rand, but it was clear to us that their principal was Remington-Rand.

Q. Well, did they state to you? A. They told us that they negotiated on behalf of Remington-Rand.

Q. Well, did they say Remington-Rand or the Remington-Rand group, or Remington-Rand and its affiliates and subsidiaries, or, what did they say? A. Most of the time they spoke about Remington-Rand, but on both sides the term Remington group was used sometimes in a casual way.

Q. Did you make any inquiry as to the identity of the group? A. No, Your Honor.

1548 Q. Did Dr. Sturzenegger make inquiry as to the identity of the group? A. No.

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1550 **Dr. Felix Carl Iselin**

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Mr. Gordon: We will next read Dr. Iselin's deposition. I think Mr. Burroughs can sit here beside me. We will probably skip quite a bit of it by consent of the two of us. Mr. Hiss will represent Dr. Iselin and will read the answers.

The Court: You do not have a copy for me?

1551 Mr. Gordon: Yes. There is one right here.

Dr. Iselin's English was the worst of any of the witnesses and a great deal of his had to be translated, which makes for a little confusion in the deposition. That is the reason for it.

Mr. Gordon: We will begin at page 474, Your Honor.

The Court: This was taken here?

Mr. Gordon: Yes, sir. This is the deposition taken prior to the trial. Dr. Iselin is now back in Basle, where he lives.

The Court: Very well.

(Thereupon, Mr. Gordon and Mr. Hiss read the questions and answers, respectively, of the Iselin deposition, as follows:)

"Q. Will you state your full name? "A. Felix Carl Iselin."

Mr. Gordon: This is examination by Mr. Burroughs. I am representing Mr. Burroughs now.

(Resumes reading as follows:)

"Q. Where do you reside? "A. In Basle, Switzerland.

"Q. What is your occupation? "A. I am lawyer and notary public.

"Q. Do you have any connection with the firm known as Interhandel? "A. I have. Yes, I have.

1552 "Q. What is your connection with it?"

Mr. Hiss: Here is where the interpreter translates. Should I say—

The Court: I think you should be literal.

Mr. Gordon: That is what I thought.

The Court: And then if counsel want to make any corrections, they may do so.

Mr. Hiss: Should I say interpreted?

The Court: Yes.

(Reading)

"A. (interpreted) He is a member and president of the Board of Directors.

"Q. When he says 'a member'; he means a member of the Board of Interhandel, does he? (interpreted) "A. (interpreted) President of the Board. He is President of the Board. I am not manager."

Mr. Gordon: Mr. Burroughs, to make this go more quickly, may it be understood that where the interpreter says "he," he is talking about Dr. Iselin, unless we say something different?

Mr. Burroughs: Yes.

"Q. No. He said 'member.' "A. I think you say 'director.'

1553 "Q. Now, is he the president of the company, or the president of the Board of Directors? "A. It is the same.

"Q. The same. He understood me all right. "A. (interpreted) He is since 1929 a member; and since 1940, he became president. In 1940, he became president.

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1557 "Q. Dr. Iselin, did you have any conferences during the year of 1946 with Mr. Richner of the Union Bank, concerning the possible sale of the G.A.F. shares belonging to Interhandel, which were blocked and vested by the United States Government? "A. Yes, I have seen him three times, Mr. Richner. The first in summer '46, about in May '46, I think; and then in July '46; and then I saw him again in Zurich at the meeting with the gentlemen of Remington Rand, at the Union Bank, on the 14th of March, '47. I saw him another time, May or June '47, after we had the differences with Remington Rand.

"Q. Did you by any chance see him on March 10, '47? "A. March 14.

"Q. With Remington Rand representatives? "A. Yes."

Mr. Gordon: Then there is a little more.

1558 Mr. Hiss: (reading)

"The Witness: It was a meeting at the Union Bank office. I thought it was the 14th of March."

"By Mr. Burroughs:

"Q. Now, going back to the meeting of May, 1946, tell us what took place at that time. * * *

"By Mr. Burroughs:

"Q. The witness has told us that he first discussed the possible sale of G.A.F. shares with Mr. Richner in May of 1946. (Interpreted) "A. Yes. I have seen him the first time about May; but Mr. Germann and Mr. Sturzenegger saw him earlier also.

"Q. Yes. Now, my question was, what took place when you talked with Mr. Richner in May of 1946 about these G.A.F. shares? "A. He cannot remember exactly what they discussed; but he thinks that there were questions, preliminary negotiations preceding the gentlemen's agreement. (Interpreted)

"Q. Did you meet with Mr. Richner and others on June 6th of 1946? "A. I saw him again after May, when we gave him the declarations for the gentlemen's agreement in Basle. I don't know if it was June 6th.

"Q. Did you, at the May meeting, or if there was

1559 a June meeting, at the June meeting lay down any terms to Mr. Richner as to the possible sale of the G.A.F. shares? When I say "lay down," I mean, did you state the terms under which Interhandel might be willing to sell its G.A.F. shares? "A. 'Laid down'?

"The Witness: Orally, he discussed.

"We gave them orally to Mr. Richner.

"They orally gave them to Mr. Richner.

"By Mr. Burroughs:

"Q. At the time you made the oral statement, who was present representing Interhandel; and who was with Mr. Richner? "A. Present was Dr. Sturzenegger, Mr. Walter

Germann, and if I am right, also Mr. August Germann was present; but I am not sure of the last.

"Q. And yourself, of course? "A. And myself, yes.

"Q. And who was with Mr. Richner? "A. I think Dr. Wehrli.

"Q. Do you recall the terms of the oral agreement which you discussed with Mr. Richner at that time? "A. Oh, yes; I can remember quite well.

"Q. Will you tell us, as nearly as you can, what those terms were?"

1560 Mr. Gordon: And then I think we can skip down to the next page. This is just colloquy with the interpreter. At page 489 he starts again.

"The Witness: We told Mr. Richner that we are in no position now to make a contract with him re our participation in General Aniline and Film Corporation in New York; but that we were ready to accept an offer if, before all our claims and holdings in the United States, to wit, our holding in General Aniline and Film, our banking accounts, our claims, on unpaid dividends, our own Interhandel shares, which are in the United States, are released; and further, if discrimination of our corporation, of our members of the Board, of our manager, of all our affiliated corporations, and of the members of the Board of these corporations—if the discrimination of all these people and corporations is ended—in brief, if everything has been restored, then we are ready to accept an offer against payment of $25 million, payable in Switzerland, in Swiss francs, or in gold.

"By Mr. Burroughs:

"Q. If I understand your testimony correctly, as translated, when all of those conditions were fulfilled, and you got your property back, and the money released, and you were removed from the Black List, you would then be prepared to sell your shares in G.A.F. for $25 million—A. No.

1561 "Q. Wait a minute, now—for $25 million, payable in Basle, in gold. Is that a correct statement? "A.

Not quite right. * * * * Then we are prepared to accept an offer.

"Q. To do what? "A. To sell our G.A.F. share of 25 million of dollars.

"Q. Well, if you got all of these properties back, and you acepted the offer to sell, that would be equivalent to selling the G.A.F. shares; would it not? "A. Yes; yes.

"Q. When was the next meeting with Mr. Richner and others in connection with this G.A.F. sale? "A. The meeting at which I was present.

"Q. Yes, sir. "A. 14 March, 1947.

"Q. You had no further contacts, then, between the May or June meeting—whichever it was—and March, 1947? "A. With Richner?

"Q. With Richner, or any other representatives of Remington Rand? "A. No, no.

"Q. Now, would you tell us who was present at the March 14 meeting? "A. March 14 were present, for Inter-
1562 handel, Dr. Sturzenegger, Mr. Walter Germann, and myself. For Remington Rand, Mr. Shorten and Mr. Garey. For the Union Bank, Mr. Richner and Mr. Wehrli; and there was also present, Dr. Henggeler. He is a lawyer in Zurich. I think he was called by Mr. Richner.

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1563 "Have you told us the names of all persons who were present at the March 14 meeting? "A. I was present at March 14. Yes, I think so.

"Q. Now, tell us what took place at that meeting. "A. During this meeting we had with the representatives of Remington Rand, that is, especially with Mr. Garey,
1564 who has declared that he must have an option.

"Q. Doctor, did you have any difficulty in understanding Mr. Garey? "A. In Zurich?

"Q. Yes. "A. Yes; I had, because he was very excited.

"Q. Was that the only reason you had difficulty in understanding him? "A. No, that is not the only reason.

That is not the only reason. I have difficulties to understand him and I couldn't participate at the discussion, because I didn't understand enough.

"I can remember that I gave a brief declaration, saying that we are not competent to give him the option, because our Board wouldn't do it.

"Q. Now, when you speak of option, you mean written option?"

The Court: We will suspend while the reporters
1565 change.

"A. He spoke of option, yes; and I think he said this option that he asked for."

Then the question was interpreted and the answer continues:

"A. About the form of the agreement, of the option, they did not especially discuss; was not essential, that is, the form. They discussed the general principle."

The Court: Is that question shown here?

Mr. Hiss: Yes, I started it here, and then I told Mr. Bettis I had better read the whole thing. Then the witness continues:

"No, no. That is not right." Then there was discussion off the record and statements by the Interpreters, and the Interpreter said: "I will translate literally, because it is the best way to do it: 'We discussed the principle, whether an option can be given or not.'"

And the witness says: "That is right, sir."

Mr. Gordon (reading):

"Q. Had there been submitted to you, prior to this meeting, a form of option in writing, and a form of power of attorney in writing? "A. He says that two drafts were submitted; but he can not remember whether this draft was submitted on the meeting of the 14th of March, or whether they were submitted already before, during meetings during which he was not present.

1566 "Q. In any event, you had seen the drafts of the option and the power of attorney? "A. I have seen them; yes, I have seen them.

"Q. Now, didn't Mr. Garey tell you at that time that it was necessary for him to have something in writing that he could represent the interests of Interhandel with the authorities of the United States Government? "A. Yes, yes.

"Well, he said that he has to have something to show; and that if he would not get an option—that he is only here for two weeks, in Switzerland only for two weeks—

"No. He has already been here for one or two weeks.

And if he couldn't get anything, he would just pack his bag and go. And he said that very excitingly, Mr. Iselin said."

"Q. At that time, he was insisting on having something in writing, was he not? "A. Also, yes, he was insisting to have an option and to have a power of attorney.

"Q. If you could not understand Mr. Garey, are you now telling us what was translated to you by someone else? "A. What was translated to me?

"Q. Did someone translate Mr. Garey's state-
1567 ments for you? "A. Well, Mr. Garey wanted the option, or said he had to have the option; and he demanded the option; and we have refused to give it; and Mr. Garey expressed that the discussions, negotiations, would be ended."

Mr. Gordon: Then Mr. Burroughs said "Obviously, he did not understand my question. Perhaps you had better repeat it to him." Then he goes on:

"Q. If you did not understand Mr. Garey, did someone translate Mr. Garey's statement for you? A. He understood that much, they would not come to an agreement; the gentlemen of Remington Rand have demanded something which Interhandel could not grant.

Q. That still is not responsive to my question. A. I have not finished my answer.

Q. I am sorry. A. The meeting reached at that point; then the gentlemen of Remington Rand and the Union Bank left the room, the meeting room, and went into a side room."

Mr. Gordon: Then skip to 499:

"Q. So that actually you can only tell us those things which you, personally, understood Mr. Garey to say? A. Yes.

Q. Now, when Mr. Garey and Mr. Richner and Dr. Henggeler, and others, left the room, what next took place?

1568 A. He thinks, or he assumes that the gentlemen discussed the matter among themselves.

In the other room.

Q. They did not leave the meeting permanently? A. No, no. They just left to discuss the matter among themselves.

Q. Did anyone representing Interhandel go out of the room to discuss the matter with Mr. Garey and Dr. Henggeler, and other? A. No.

Q. Sir? A. No, no.

Q. Dr. Germann did not leave the room to talk with them? A. No. Dr. Sturzenegger, Mr. Germann, and I, we remained in the big room, in the Board room.

Q. Now, what happened when these gentlemen returned to the Board room? A. After the gentlemen returned, as far as he can remember, Dr. Henggeler took the word.

Q. Dr. Henggeler did what? A. Started talking.

Q. What did Dr. Henggeler say? A. Dr. Henggeler said that one should find a means so that the discussions or the negotiations wouldn't go to the rocks, I think you

1569 would say.

Q. Then what happened after Dr. Henggeler made his statement? A. I can remember that the result of the meeting was that they agreed that they would keep the gentlemen's agreement; that they would prolong, or extend the gentlemen's agreement.

Q. Did he say who agreed to this? A. No, he didn't say, so far. And that the representatives of Interhandel declared themselves ready to—

To consult again their Board of Directors.

To present the question again, or to put it again before the Board of Directors.

The question if an option could be given.

The question if the option could be given to Remington Rand would be laid, or could be laid before the Board of Directors once more.

Q. Doctor, let me ask you if this took place: When Dr. Henggler and the other gentlemen you have named, who were representing Remington Rand, returned to the room, and Dr. Henggeler made his statement, did Mr. Garey then get up and come around to the side of the table where you and Dr. Sturzenegger and Mr. Germann were sitting; and did each of you at this time get up and shake hands with Mr. Garey? A. It was at the end of the meeting in
1570 Zurich he gave us the handshakes.

Q. It did not take place? A. He said Mr. Garey made a certain scene; and they shook hands only when they left; that is, when the meeting was ended.

Q. You didn't shake hands as soon as Dr. Henggeler made his statement, after the little conference outside, and before the conference continued; did you? A. Shake hands before the conference continued?

Q. Yes, after Dr. Henggeler made his statement. A. No, I think it was at the end of the meeting.

Q. Are you sure? A. Yes, I think.

Q. You are positive of that; are you? A. Yes.

Q. Then, after Dr. Henggeler made his statement, did you agree to give the Remington Rand group anything in writing? A. No. We only said we will prolong the terms of the gentlemen's agreement; and we will again consult the Board of Directors of Interhandel, if an option can be given to the representatives of Remington Rand.

Q. You did not agree, when you left the meeting, to give the Remington Rand group anything in writing? A.
1571 No, no, no.

Q. Did you have a Board of Directors' meeting following the March 14 meeting? A. March 17, we had a meeting of the Board of Directors of Interhandel.

Q. What did you decide to do at that meeting? A. We decided at that meeting that we couldn't change our view;

and that it would not be possible to give an option to Remington Rand."

Mr. Gordon: Then we will skip down here a little bit:

"Q. Did you decide to do anything else at that meeting? A. They said that the gentlemen's agreement should continue yet for a while; and they were not ready to grant—to give an option. We were, in principle, not ready to give an option. They had definite reasons why they could not give the option.

Q. Did anything else take place at that meeting that you recall? A. I think you have the minutes. You will see what we did in this meeting.

Q. Now, you did not, at the March 14 meeting, agree to give the Remington Rand representatives any writ-
1572 ing at all? A. No.

Q. Is that your testimony?"

Mr. Gordon: Then we skip down to the middle of page 505:

"A. No. During that meeting of March 14, they agreed that the question would be submitted to the Board of Directors; and what took place on March 17—that is, the question was submitted on March 17.

Q. Doctor, didn't Mr. Garey, at this March 14 meeting, insist that Interhandel give him a letter outlining the terms of the agreement? A. Yes.

Q. In certain particulars? A. Yes; he asked for that letter.

Q. He insisted upon it? A. Yes.

Q. And then, did you say to him, at that time, that you would take it up with your Board of Directors? A. Yes.

Q. And isn't it a fact that as a result of Mr. Garey's demand, your Board of Directors decided to send a letter to him, which letter was sent on March 17, 1947? A. the letter of March 17 was not a letter to Mr. Garey; but a letter to Mr. Richner.

Q. You agreed to send a letter to somebody repre-
1573 senting Remington Rand, did you not? A. Yes, yes.

Q. Your Board of Directors directed you to send a letter to Mr. Richner dated March 17, 1947; is that right? A. Yes.

Q. You signed that letter? A. Yes.

Q. Mr. Germann signed it with you. A. Yes.

Q. Now, what next took place after you sent that letter? A. After this letter, we saw the representatives of Remingon Rand at a dinner on the 19th of March, in Basle. That was the next.

Q. And what took place at the dinner? A. Mr. Garey, again, or anew, declared that he has to have an option, without which he could not do anything in the United States; and he also declared that what great influence Remington Rand had in the United States."

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1574 Q. Do you recall ever having seen an English translation of your letter of March 17? A. Yes, I remember, yes.

Q. When was the first time you saw it? A. I think I saw it some days ago.

Q. Was that the first time you had ever seen it? A. I think so.

1575 Q. Let me ask you if Mr. Garey did not, at that dinner meeting, state to you gentlemen that the letter of March 17 did not embody the three points which he wanted included in the letter? A. He assumes that Mr. Garey said something like that, or said something similar. Then, after the dinner—that is, a few days after the dinner, on the 20th of March—

The day after the dinner, the 20th.

The day after the dinner, on the 20th of March, we have written—

We have written a letter to Mr. Shorten.

We have written a letter to Mr. Shorten, in which, certain points were stated, which were mentioned during the dinner of the 19th.

Q. Was that the letter delivered to Mr. Shorten by hand; do you recall? A. I don't know.

Q. Doctor, in your letter of May 17, 1947, the statement is made: 'That we are prepared to extend the gentlemen's agreement which exists between us definitely in such a way that it will be only cancelable again after 14 days from the date of April 15, 1947. A. They would not tie themselves down for a longer period of time."

Then the Interpreter says: "We didn't want our-
1576 selves bound."

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1578 "Q. I want to know what your understanding of a gentlemen's agreement is in Switzerland. What is it? Not as it applies to this case. A. In Switzerland, it is an agreement by which two parties, which consider themselves decent, honorable, honest, which consider each other honest, or decent, promise something, without making any definitive agreement."

Then the Interpreter says: "Without making a formal contract." And the witness then adds: "Without making a formal contract."

The witness then says: "This form of gentlemen's agreement is, in my opinion, chosen when the one or the other partner, for any reason, is not yet ready, or is not in a position to conclude a formal contract.

Q. What is the purpose of a gentlemen's agreement preceding the execution of a formal contract? A. The purpose of the gentlemen's agreement is that a formal agreement is going to be concluded as soon as the hinderances, or the matters in the way of the conclusion of a contract have disappeared, or are no longer existing.

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1589 Q. Did you know of the American Aniline & Chemical Company prior to the receipt of that communica-
1590 tion you have just described? A. I know that the American Aniline & Chemical Corporation has been

mentioned in the letter which Mr. Nemzek addressed in December, 1946, to Dr. Sturzenegger. I did not know anything in particular about this corporation before the 5th or 6th of May. When the cable of the American Aniline arrived, I was quite naturally interested what kind of entity this was, and I learn—

I was very astonished to learn—

I learned with great astonishment that it concerned a company which had a capital of $10,000.

Ten thousand dollars only.

Q. I think you have told us that you saw a draft of the proposed contract and power of attorney which had been submitted to Interhandel. Can you now tell us whether that contract and power of attorney ran to Remington Rand or to American Aniline & Chemical? A. As far as I can remember, it was the draft of the power of attorney of the American Aniline Corporation."

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Cross Examination

By Mr. Gordon:

1596 Q. In the complaint of intervention filed by Interhandel, the following allegation is made:

'On or before April 22, 1947, intervener . . . ' —

That is Remington Rand.

— ' . . . held an option, made and granted to it by

1597 the plaintiff . . . ' —

That is Interhandel.

'— . . . in Switzerland, under the terms whereof plaintiff offered to sell to, and agreed to accept an offer by the intervener, or one of its group, to purchase aforesaid stock, delivery thereof to be made upon the return of said stock to plaintiff by the defendants or their successors in office, or any of them, and said delivery to be made against payment by intervener, or by one of its group, to the plaintiff, of the sum of $25,000,000 in the equivalent thereof in Swiss francs at the then current rate of exchange in Basle, Switzerland; and it was further agreed as a term of said option

that the plaintiff could, at any time prior to acceptance thereof, cancel said option by failure of intervener, or one of its group, to accept said offer of the plaintiff to sell said stock and to offer to purchase said stock from the plaintiff within 14 days after the receipt of a notice of cancellation.'

Now, will you kindly look at that paragraph 5 that I have read you so that you will see what I am talking about?

Now, let me ask you, has anyone representing Interhandel, to your knowledge, on behalf of Interhandel, entered into any such option as is described in that paragraph?

A. No.

1598 Q. To your knowledge, has anyone representing Interhandel ever entered into any such option with American Aniline & Chemical Company? A. No.

Q. To your knowledge, has anyone representing Interhandel ever entered into any such option as that with anybody? A. No. Never.

Q. Now, you have described in your testimony what the so-called gentlemen's agreement was, and I will not go into that again except to ask you this: Was there any gentlemen's agreement on the part of Interhandel with anybody except Remington Rand? A. No.

Q. Now, I will ask you as an expert Swiss lawyer, under the laws of Switzerland, did the gentlemen's agreement that you had with Remington Rand in any way give Remington Rand an option such as is described in the fifth paragraph of intervening complaint that I have read to you? A. No.

Q. Now, let me ask you, as a practicing Swiss lawyer, in your opinion were the moral obligations of interhandel, which you have described, in the gentlemen's agreement fully performed by Interhandel? A. Yes, they have

1599 all been fulfilled.

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Mr. Gordon: Then at the top of page 542:

(Thereupon, a photostatic copy of a translated telegram was marked Plaintiff's Exhibit No. 2 for identification; a photostatic copy of a letter from the Swiss Compensation

Office dated Oct. 30, 1945 was marked Plaintiff's Exhibit No. 3 for identification; a photostatic copy of a letter from the Swiss Compensation Office dated Nov. 14, 1945 was marked Plaintiff's Exhibit No. 4 for identification.)"

And copies were handed to the witness.

Then Mr. Burroughs asked: "Can you fix the date of this?", referring to the telegram, and I said: "It is on the next one, which is October 30. You see, they have written and confirmed the telegram of the same date, October 30, 1945."

1600 Then I continue the questioning:

"Q. You will notice, Dr. Iselin, that the first one doesn't have any date on it, but the second one is 30 October, 1945. A. The letter has a date. The telegram has no date. The same date?

Q. Yes.

Will you please tell us what these are, if you know? A. I can give you information about this. Under the pressure of the Allied States, Switzerland was forced to block all German assets in Switzerland, and, as a matter of fact, this block was also applied against companies in which it was supposed, or in which German interests were supposed to be or were suspected to be participating."

* * * * * * * * * *

1602 "Q. As a Swiss lawyer, have you had practice in regard to blocking matters so that you are familiar with the laws and practice relating thereto? A. Yes, I had.

1603 Q. Have you had considerable amount of such practice? A. Yes. Oh, yes.

Q. Dr. Iselin, what was the effect of these blocking orders on Interhandel?"

Then Mr. Burroughs objected.

Mr. Burroughs: I withdraw the objection.

Mr. Hiss (reading):

"The Witness: The letter of the 30th of October, 1945, states that Interhandel had yet the right to take care of the

current business; besides that, that Interhandel could not dispose of its possessions—"

And the Interpreter added: "Make any transactions concerning its assets."

Then there is a long colloquy. The other Interpreter says: "That is so important that we should use here the exact language.

First of all, the witness didn't say the right to, but the witness said Interhandel might do its regular business.

He said literally his letter says that Interhandel might go on with its regular business but that Interhandel can not dispose of property. And I would suggest here to put in parenthesis the German words.

The Witness: That is right.

Q. You say the letter says that."

1604 Mr. Burroughs: Just a second. Will you read what your statement was, Mr. Gordon?

Mr. Gordon: The witness says: "That is right," and I say: "That is right. They all agree to that."

Then I go on with the questioning:

"Q. You say the letter says that. Where does the letter say that? A. The letter of the 30th of October said:

'We herewith confirm our today's telegram with the following text: . . . and inform you that we got directly into touch with I. G. Chemie regarding this under today's date, and have sent it the necessary authorization for the continuation of its business to the scope and extent hitherto normal.'

Q. Where do you find in the letter the statement that you made that they couldn't dispose of their assets? A. That is not expressly said in this letter, but it is contained in the decree of the Federal Council of Switzerland.

Q. Referred to 'of February 16, April 27, and July 3'? A. Yes."

Then Mr. Burroughs says: "Well, actually the letter does quote the telegram, doesn't it?

"Mr. Gordon: Yes.

"The Witness: Yes.

1605 (Interpreted.) He said that it says at the same time also that it had the necessary authorization for the continuation of business.

That is stated in the last paragraph of this letter."

And he indicates Exhibit 3.

"Q. Would it be correct to say that in your opinion as a Swiss lawyer when they said that these decrees that are quoted were to be applicable to all properties of I. G. Chemie, that meant that I. G. Chemie could not sell any of the properties? Is that right? A. Yes, without the consent of the Swiss compensation office.

Q. Now, in your opinion as a Swiss lawyer while this blocking was in effect, could I. G. Chemie enter, lawfully enter, into a contract or option to sell its properties? A. No, it couldn't.

Q. It couldn't? A. No.

Q. When I say 'its properties,' do you refer to the General Aniline & Film stock? You include that? A. Yes.

Q. Were any further efforts made by you to have this blocking taken off? A. Further steps to—

Q. Yes, sir. A. Yes, sir.

1606 We have, in this matter, this ordinance of the 30th of October appealed, the course of October 30th.

Q. Were you successful in having it repealed? A. Our recourse had been approved in the beginning of January, 1948, by the Commissioner of Appeal. Before that detailed controls had been made by the Swiss compensation office—detailed investigation and controls by the Swiss compensation office—and this office issued a voluminous report and because of this report our appeal has been satisfactorily approved, has been approved, or has been successful. Our appeal has been successful.

Q. Am I right now in understanding that the blocking was, in effect, a blocking made by the Swiss compensation office, and was in effect from 30th of October, 1945 until January 1948? Is that right? A. Yes, that is right.

Q. Did that fact have anything to do with Interhandel entering into a gentlemen's agreement rather than a binding contract?"

Mr. Burroughs then objected and I changed the question:

"Q. Did that fact have anything to do with the Interhandel entering into what you called a gentlemen's agreement? A. That is right. We could not because of
1607 the blockade enter into an option agreement or a contract of any other kind with Remington Rand, or with any other group, but we had to concentrate ourselves to declare that we would be ready to accept an offer when certain conditions would be fulfilled before.

Q. Now, in your opinion as a Swiss lawyer, if the United States authorities had released the stock that we are talking about and it had been returned to Interhandel within the period of the gentlemen's agreement, in your opinion would there have been any trouble after the United States had released it in getting the Swiss compensation office to release it from their blocking? A. Yes. He thinks that he can assume that because the Blockade was only brought about by American pressure.

Q. So that if the stock had been returned within the period of the gentlemen's agreement, in your opinion there would have been no difficulty about Interhandel carrying out its part of the gentlemen's agreement; is that right? A. Yes, that is right.

Q. I may have asked you this before, but during the period from October 30, 1945, to January, 1948, did Interhandel ever obtain from the Swiss compensation office a license to sell the General Aniline & Film stock or to
1608 give an option to sell it? A. No.

* * * * * * * * * *

Q. Doctor, what is your distinction between an option and a gentlemen's agreement, such as you have described was in existence in this case? A. The option is a special agreement whereas—"

1609 And the Interpreter says: "It is a special type of contract."

The witness says: "Yes."

And the Interpreter: "While the gentlemen's agreement is a certain form of a contract."

Then questions by Mr. Burroughs:

"Q. Is that right? A. What did you say?"

Mr. Gordon: Then the Interpreter—well, go ahead.

Mr. Hiss: One Interpreter said: "Is a special form—" and the second one said: "He said is merely a certain form of a contract," and the first one then retorts: "Then he used the words: That is the same as if you compare a straw hat with a hat."

Mr. Gordon: Then the question was read again. Then the witness said what?

Mr. Hiss (reading): "The option agreement would give to Remington Rand the right to acquire the GAF participation shares under certain conditions.

Now, the gentlemen's agreement that we concluded merely the contents were we would be ready to receive an offer by Remington Rand under the condition in case certain conditions were fulfilled.

1610 Q. Didn't the gentlemen's agreement which you have described give Remington Rand the right to purchase the GAF shares if those conditions which you have described were fulfilled?

"The Witness: Yes. First, the condition must be fulfilled and then only Remington can acquire the shares.

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1616 **Roger J. Whiteford** was called as a witness for and on behalf of the Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gordon:

Q. Will you state your name, please? A. Roger J. Whiteford.

Q. What is your occupation, Mr. Whiteford? A. Lawyer.

Q. Are you a member of the District of Columbia Bar? A. Yes, sir.

Q. For how long a period? A. Oh, 38, 39 years.

Q. Are you in active practice? A. Yes, sir.

Q. You are a partner of Mr. Wilson? A. Yes, sir.

Q. And you and Mr. Wilson have been representing Interhandel in connection with the attempt to get their
1617 property back from the Alien Property Custodian. Is that right? A. That is true.

Q. Do you recall a conversation with Mr. Rand, the President of Remington Rand, in February, 1947? A. Yes, sir.

Q. Do you recall what led up to that conversation? If so, will you state it? A. I received a telegram in Miami Beach, where I was staying, in February of 1947, from General Cummings,—Homer Cummings, who was representing Mr. Rand, or Remington Rand, in which he suggested that it would be the courteous thing to call on Mr. Rand, who was on his boats, or had his boats down at Miami Beach, at, I think, the King Cole docks. That is my memory of it.

Q. That is in Florida? A. Yes, sir.

Q. Did you get in touch with Mr. Rand then? A. Yes, some days later, I should imagine it was a week or more later, I called Mr. Rand, told him that I had had this telegram from General Cummings, and that if it were convenient for him, I would come over, either that day, or the next, in the evening. I don't recall whether I called him in the morning and went that day, that evening, or went the next day.

Q. Well, did you in fact, then, go to Mr. Rand's boat? A. Yes.

1618 Q. And you had a talk with him? A. Yes. Mr. Howard Duckett and I were staying at the Beach, at the Good Hotel at that time, and we went over some time around five-thirty in the evening, I guess, and met him at his fishing boat at the King Cole dock.

Q. Excuse me just a minute. Will you state then just what occurred? A. Well, we sat around and chatted a while. There was some gentleman on the boat with him. Mr. Duckett went over with me, and we sat in the stern of the boat and talked about fishing, and the weather, and golf, and all of the things you talk about in Florida, and in addition imbibed either Bourbon or Scotch, I have forgotten which.

And after chatting a while, I got up to go, and the gentleman that was with Mr. Rand either went into some other part of the boat, went forward. Mr. Duckett went on away from the boat, toward the car that we had, which was parked perhaps 50, 75 yards away, or more.

And by that time, Mr. Rand and I, I think, were standing on the dock next to his boat, and he turned to me, and he said "Mr. Whiteford, why is it that you will not recommend to your clients to give me an option on the G.A.F. stock."

And I said "Well, Mr. Rand, you have asked that question a number of times before. You know our attitude about it. I see nothing to be gained about it, and so far as
1619 I am concerned I will never recommend that you have an option."

He replied by saying "Well, everybody"—he either said everybody in Washington, or everybody in the Administration—"wants me to have that stock."

Mr. Burroughs: Now, if Your Honor please, I am objecting to this line of testimony. As I stated yesterday, I think it is irrelevant and immaterial. What Mr. Rand may have said concerning the option is one thing. What he said with respect to somebody wanting him to have the option is another matter entirely, and I think it is highly improper, and irrelevant, and immaterial.

The Court: Overruled.

The Witness: I said "Who do you mean by everybody wanting you to have the stock?"

He said "Why, the President wants me to have this stock."

And I said "Well, did he tell you so?" and he said "Yes." "Well," I said, "Why does the President want you to have the stock?" "Well," he said, "I have promised to give a portion of the stock if I get it to the Cancer Foundation, and he is very much interested in that, and therefore wants me to have it."

And I said, "Well, who else wants you to have it?"

And he said "John Snyder", meaning John Snyder, the Secretary of the Treasury.

1620 And I said "Did he tell you that?"

He said "No, he didn't tell me, but I understand he wants me to have it."

And I said "Well, who else?"

He said "Tom Clark wants me to have it"—meaning the Attorney General and the then Alien Property Custodian.

And I said "Did he tell you that he wants you to have it?" And he said "Yes."

Well, I said, "Mr. Rand, will you make an engagement with any one of those three men, and take me with you to keep that engagement, and if any one of the three men will say to you in my presence that they want you to have this stock, I will endeavor to get an option for you within 24 hours."

He said "Well, you can't do that, because they wouldn't say it in your presence, because you represent the Swiss Company, that they think is I. G. Farben, and therefore they wouldn't say that in your presence."

"Well," I said, "Mr. Rand, I can make an engagement, I think, with any one of those three men. I am going back to Washington tomorrow." It was right at the end of February when I saw him, and our vacation was over. "I am going back to Washington tomorrow, and if you authorize it I will endeavor to make that engagement, and if you are coming back to Washington, or will come back to Washington, I will ask them that question, whether they want you to have the option."

1621 "No, no," he said, "I won't do that." He said "It would be futile to try to talk to them about it with you there."

I said "Well, Mr. Rand, I have not discussed the matter of your having an option on this stock with the President, or with Mr. John Snyder. I have my own ideas as to their views about it. But I have talked to the Attorney General many times about your getting an option on this stock, and so far as Tom Clark wanting you to have this option, it is a plain damn lie." And I turned on my heel and walked on over to our car, and left him.

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1638 **John J. Wilson** was called as a witness for and on behalf of the Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gordon:

Q. Will you state your name, please? A. John J. Wilson.

Q. And what is your occupation, Mr. Wilson? A. Lawyer.

Q. Are you a member of the District of Columbia Bar? A. Yes, sir.

Q. How long have you been in practice? A. Since 1922.

Q. And you are in active practice in the District of Columbia? A. I am.

Q. You are a partner of Mr. Whiteford, who testified in this case? A. I am, sir.

Q. Mr. Wilson, you are the counsel for Interhandel, are you not, in regard to its affairs with the Alien Prop-

1639 erty Custodian? A. Yes, sir.

Q. When did you first become counsel for Interhandel, or the predecessor company,—Chemie? A. I was first retained in the fall of 1941, before Pearl Harbor, and at that time I was concerned with another phase of the matter principally. It was at that time that I met Mr.

Garey and Mr. Desvernine. I had not known him prior to that.

Q. Did you continue to act as counsel for Interhandel from that time on down to the present? A. Yes, I did. During the war, there was very little activity, except of a watchful character. Interhandel was on the blocked list, and communication with Interhandel was prevented except by license, and was permitted only on one or two extraordinary occasions during the war.

But during that entire period, I saw Mr. Desvernine frequently, Mr. Garey less frequently. I should say, if I had to guess, that I saw Mr. Garey maybe a half a dozen times, let us say, after Pearl Harbor, up until 1946. I saw Mr. Desvernine much more frequently, either here or in New York—probably fifty times.

The Court: Is Mr. Desvernine a partner of Mr. Garey?

Mr. Gordon: Yes, sir.

1640 The Witness: He was at that time. He was then.

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1642 A. I testified before the committee. I would say I contributed a little, Mr. Gordon. With my characteristic modesty, I would say I was not a total loss.

1643 Q. Was the legislation defeated? A. The legislation was defeated.

Q. Was that what you and Mr. Shorten were trying to do? A. Exactly.

Q. Certainly you didn't prevent it from being defeated, did you? A. No, I didn't prevent it from being defeated.

Q. Now, I don't know that it is quite plain in the record what the interest of Mr. Shorten was in trying to defeat this legislation, as expressed to you by him and Mr. Rand, or others in the company. A. Well, they wanted to acquire somehow a favorable position in the General Aniline picture, and, naturally, if the legislation were passed, so that the Attorney General, or the Alien Property Custodian, then could make a sale without being prevented through a 9(a) suit, then the only opportunity that Remington Rand

would have had to acquire the stock, was as a bidder at a public sale.

So Mr. Rand had intentions, as he expressed them to me, to acquire a favorable position by other methods or in another way, and thus it was to his interest, as it was to ours for other reasons, to prevent the passage of the legislation.

Q. Did there come a time in July of 1946 when you planned to go abroad? A. Yes, I did, Mr. Gordon.

1644 I was to fly on the day of July 10th, I think, and the Constellations were grounded, and I didn't get along. As a matter of fact, it was after that disappointing event that most of the intensive work was done in opposition to the legislation. I think the legislation was defeated on the 6th of August, if I recall it correctly, so that I did not leave this country until about the 22nd of September, for other reasons.

Q. Did Mr. Rand say anything to you before you left? A. I recall at least one conversation in New York with Mr. Rand and with Mr. Desvernine, I would say in July, in which I went there to discuss with them what their objectives were. Up to that point, I had seen Mr. Rand two, three, four times, maybe not over that, maybe not that many. I had seen Mr. Shorten on numerous occasions. I had seen Mr. Desvernine frequently. And no one of them was very definitive as to the character of the objective which was sought by Remington Rand in relation to Interhandel. I made inquiry—

Mr. Burroughs: Will you let me interrupt Mr. Wilson? If Your Honor please, I think the witness has had ample leeway in his testimony. I do not wish to unduly restrict him, but rather than characterize it, I think he ought to say what they said to him, or he said to them.

Mr. Gordon: I was afraid that was coming.

The Witness: I was hoping it would.

1645 By Mr. Gordon:

Q. What did Mr. Rand say to you, if anything, before you left for Europe? A. I went up to see Mr. Rand in July,

and asked him point-blank this time, "What is your plan?". And on that occasion, he told me—

The Court: Who?

A. (Continuing) Mr. Rand told me that he planned to attempt to acquire the preferred shares of Interhandel on an option basis. He did not state to me that he had any such option, nor did he state to me that he had any other kind of an option, but that his program was to seek to acquire an option upon the preferred shares, for which he wanted to pay, that is to say, if he exercised the option he wanted to pay a million four hundred thousand dollars.

And he stated also that if he exercised the option, that he would make a tender to shareholders in Switzerland, of Interhandel, to acquire their shares for 900 Swiss francs apiece.

He told me further that his plan was that if he acquired such an option, he would then undertake to have the G.A.F. shares returned to Interhandel, and that upon that occurring, he would exercise the option and acquire the preferred position in the Interhandel Corporation, and make the tender to the common stockholders of a willingness to
1646 purchase their shares for 900 Swiss francs apiece.

By Mr. Gordon:

Q. He was talking about purchasing the stock of Interhandel itself? A. That is right.

Q. Is that right? A. Yes.

Q. Not talking about purchasing the General Aniline and Film stock that was owned by Interhandel? A. No, sir. That was not mentioned to me by Mr. Rand before I went to Europe in any such form as that.

Q. Then you say you did eventually go to Switzerland? A. Yes, sir.

Q. When did you arrive in Switzerland? A. I think that was the 28th or 29th of September.

Q. Now, up to that time, had you heard anything at all about the negotiations that have been described in this case,

the conferences with Mr. Richner, Mr. Archibald, Mr. Schiess? A. No, sir.

Q. Now, tell me what happened after you arrived in Switzerland, as to your meeting the representatives of Interhandel, and the representatives of Remington Rand, when you met them, what the people said. A. Well, on the first two days I remained in Basle, as I recall, and met—I had met Mr. Germann upon my arrival Sunday evening. I made the acquaintance of Dr. Sturzenegger and of Dr. Iselin on the following two days, as I recall it, Monday and Tuesday.

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And I was informed that—pardon me—on Wednesday, pursuant to invitation, we traveled to Zurich and met there first Mr. Richner of the Union Bank, and then we proceeded—when I say "we" I mean Mr. Germann and Dr. Sturzenegger and I—we proceeded then into the Board room of the Union Bank, where we met Dr. Ulrich Wehrli, whom I recognized, and shook hands again with Mr. Nemzek, and where I met, I think for the first time, Dr. Schiess and a Mr. Barth, a Vice-President of the Chase National Bank, who told me that the European theatre was part of his business activities for Chase Bank. He was there, and all of the gentlemen whom I have mentioned remained present throughout the conference.

However, there were a few preliminary remarks in an anteroom that might have been Mr. Richner's office before Mr. Germann, Mr. Sturzenegger and I entered the Board room, which remarks were between or amongst Mr. Richner, Mr. Sturzenegger, Mr. Germann, and myself.

After exchanging pleasantries in this preliminary contact with Mr. Richner, he referred to the gentlemen's agreement, not defining it, but mentioning it by name, and bringing up in a very suave and casual way an inquiry about whether it could not be extended to a definite date, rather than on a notice basis.

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We tried to—or I tried to match this suavity and casualness in our declining to accede to that request. I had

heard the term "gentlemen's agreement" mentioned in Basle amongst our own people before we went to Zurich, but it was mentioned by Mr. Richner.

We went into the Board room, and we were in there perhaps an hour, or three-quarters of an hour. Mr. Nemzek and I did most of the talking. I don't think Mr. Wehrli opened his mouth. I don't remember Mr. Barth saying anything. I think my clients had very little to say. I think Mr. Richner was sort of master of ceremonies, you might say.

Mr. Nemzek began by saying he had just that morning had a conversation with J. H., as he used the phrase, referring to Mr. Rand, and that Mr. Rand had repeated to him the great progress that Remington Rand was making in its efforts to obtain a license to consummate some kind of a transaction with Interhandel. And Mr. Nemzek spoke about the high standing of Remington Rand in the Government circles and the prior position that Remington Rand had in that matter. I began to interrogate Mr. Nemzek, because I had the feeling that he was—

Q. Never mind your feeling, Mr. Wilson. A. Well, I began to interrogate Mr. Nemzek. And I asked him first, if I recall, what Remington Rand was going to pay the
1649 Government for getting all of this stock of GAF released. And he began to discuss some 30,000 Interhandel shares which were in Germany, and said that he thought that he thought that 5 million dollars to the Government for that phase of the matter would satisfy, or should satisfy the Government, and cause the Government to release the GAF shares to Interhandel.

He spoke about the need for clarification of Interhandel's status with the American authorities, and he announced in very definite words that it would be essential to get the approval of the Swiss authorities for any transaction that might be consummated between Rand and Interhandel.

I do not recall that the words "gentlemen's agreement" were mentioned on that occasion, but I would not say that they were not.

I definitely remember that the word "option" was never mentioned, either as a prospective agreement, nor as an existing arrangement, at that time.

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1652 Q. Mr. Wilson, did anything else happen while you were in Switzerland, if so—

Mr. Burroughs: You mean with respect to this case, I guess?

Mr. Gordon: Yes.

A. I referred a few moments ago to the fact that there was another meeting in Zurich at the Union Bank before I left on that occasion. Messrs. Sturzenegger and Germann and I were present for Interhandel; Mr. Richner, and I believe Dr. Schiess, and I believe Mr. Wehrli, Dr. Ulrich Wehrli, were there. I do not think that Mr. Barth, who was there on the first occasion, was there that second time.

That was an even shorter meeting, in which Mr. Nemzak made another report of progress on the part of Remington Rand in the direction of obtaining a license, as I recall it. I do not recall anything else that was discussed on that occasion.

I recall that we were again invited to luncheon, this time nearby, in a restaurant, and I can't give you the details of the luncheon, but I will mention it because that was entirely social. I will mention, however, that on our way to the luncheon—and we had to walk approximately a block or a block and a half—we paired off, and Mr. Richner and

I were walking together. Mr. Richner said it might
1653 be necessary to go back and reopen this session for an option on the preferred shares, and I said that I had understood that that had been explored and rejected and buried.

By Mr. Gordon:

Q. You mean preferred shares of Interhandel? A. Of Interhandel—and I didn't see how that could be reopened. About that time we got to the restaurant, and that was the

end of my business discussion in Switzerland with anybody representing Interhandel.

The Court: You mean Remington Rand?

The Witness: Remington Rand. Thank you, sir.

By Mr. Gordon:

Q. Did you return to the United States then? A. I returned about the last of October or first of November.

Q. Did you have a conference with Mr. Rand in November? A. Yes, I went up to—

Q. About what time? A. I went up to New York sometime around the middle of November and met with Mr. Rand, Mr. Desvernine, I think; I am not certain whether Mr. McNamara was there that day or not. We discussed my trip to Switzerland and what I had learned over there. I referred to the fact to them that—to Mr. Rand directly—

1654 that when I arrived there I learned that the discussion about the preferred shares of Interhandel had taken place months before it had occurred between him and me over here, and that it was an abandoned project by the time I got to Switzerland. I expressed some little irritation at having not been told more frankly about his side of the situation.

The discussion of the desirability for an option came up, and their desire to have an option in some form to acquire this G.A.F. shares. I am pretty sure that that was the first time it was discussed in that form with Mr. Rand.

Q. Between you and Mr. Rand? A. Yes, sir.

Q. Do you recall a conference with Mr. Rand around Christmastime? A. Yes, I recall that rather vividly. It was the day after Christmas of 1946. It was in Mr. Rand's suite in the Mayflower. He and I were alone. I remember two things which he stated to me on that occasion—at least two things. I would say that generally he was again importuning for an option, and he stated to me in just these words, that the Swiss Compensation Office could not be expected to unblock Chemie until Remington Rand was given an option.

On that occasion he also told me that the White
1655 House and the Secretary of the Treasury and the Attorney General wanted him to have the G.A.F. stock. I said to him that I wished he would take me to the Attorney General or the Secretary of the Treasury, where I might hear such a desire stated, and that I would then use my best efforts to see that an option was given. He said to me that was impossible; that no representative of the Government would make any such statement in my presence, because I was counsel for the Swiss, who were under a cloud over here.

I told Mr. Rand in polite language that I could not see my way clear to recommend the giving of an option to Remington Rand in that situation.

Q. Did you have further conferences with Mr. Rand through the month of January, 1947? A. Yes, I recall seeing him in New York around the middle of January. I can't be sure who were present. I can be sure that we went to the Union League Club for luncheon, and I recall that again the subject of discussion was the giving of an option. I think that by this time Mr. McNamara had brought me a written option, if I recall correctly. However, the discussion was about an option, not a written option nor an oral option, but simply an option.

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1656 By Mr. Gordon:

Q. That gets us up to February, 1947. A. Yes, sir.
1657 Q. You didn't go to Switzerland again? A. No. I was urged to go, but I didn't go.

Q. Urged by whom? A. By Mr. Shorten, who came to see me. I remember I was home sick one day, and Mr. Shorten came out in February and asked me to go to Europe with him and Mr. Garey.

Q. Did he say what the purpose of that trip was? A. Yes, to secure an option, to prevail upon I. G. Chemie to give them an option.

Q. Now, that gets us up to March, 1947. Did Mr. Germann arrive in America from Switzerland? A. Yes. I don't remember exactly the date, but the last week or so of March he came.

Q. Did you have any conferences with the Remington Rand people while Mr. Germann was here? A. Yes, I remember—I think very soon after Mr. Germann arrived, I believe that Mr. McNamara and Mr. Nemzek and Mr. Germann and I had luncheon together. I think it was largely social. I don't remember any particular events except it was a very pleasant luncheon.

I remember that we met—Mr. Germann and I met with Mr. Rand and Mr. Nemzek and Mr. McNamara, I think—and I am not sure about Mr. Garey—on the morning of the 2nd in the Mayflower. I guess that was the first occasion that Mr. Germann and Mr. Rand met. There wasn't
1658 a great deal that I recall occurring on that occasion—or shall I say that I recall, either on that occasion or in the evening—I can't say which—again a discussion about the desirability for an option.

Q. Were they still asking for an option? A. Yes. * * *

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1659 Q. Now, Mr. Wilson, I should have asked you this before, but let me take you back to Mr. Shorten's visit to you before he went to Europe.

Mr. Shorten testified at page 625 that on that occasion he told you that Remington Rand had an oral option with Interhandel. Is that correct? A. That is not correct.

Q. Did he ever tell you that they had an oral option? A. I never heard him say that, certainly before Remington Rand made the claim which led up to this suit.

Q. You mean after the telegram from Brady? A. Yes. I am not sure that I had discussed it with Mr. Shorten even after that, but certainly I would say unequivocally it was never mentioned to me by Mr. Shorten prior to May 6th.

Q. Did the Remington Rand group ever—that is, Mr. Rand, Mr. Shorten or Mr. Nemzek or any of the rest of them—ever tell you, up to the time that the purported tele-

gram of acceptance was sent, that Remington Rand had any kind of an option with Interhandel? A. They did not.

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1693 The Court: Of course, Mr. Hiss, under their theory, upon acceptance of the offer they are required to do certain things to consummate the transaction, one of which is to get H. Sturzenegger and Company off of the list. They are not claiming that they have performed. They don't claim that the 25 million dollars has been deposited in Switzerland. Isn't it needlessly encumbering the record?

Mr. Hiss: If they make the concession that they did not get H. Sturzenegger and Company unblocked, and that was one of the conditions, except their contention that
1694 that could happen 150 years from now, of course it would encumber the record, and I will withdraw that.

The Court: Do you make that concession?

Mr. Burroughs: No, sir. I will not concede that we had any obligation to get H. Sturzenegger and Company off of the black list, or whatever it was. We don't contend, however, that the conditions which they say were laid down, have been fulfilled.

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1717 **Argument on Behalf of the Intervener.**

Mr. Burroughs:

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1760 Now, we are going to be told that AA&CC had no
1761 right to make the offer to purchase, or the acceptance, first, because the assignment or the purported assignment or attempted assignment by Remington Rand to AA&CC was invalid, since, by the very nature of the understanding between the parties, that agreement could not have been assigned. With that we have no quarrel. We admit without hesitation that the attempted assignment by Remington Rand to AA&CC was a nullity, just as if it had never been made, • • •

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EXHIBITS.

2363 Filed Jul 20 1950

Plaintiff's Exhibit No. 1.

Zürich, December 21, 1946.

Dr. Hans Sturzenegger
c/o
Internationale Industrie-
und Handelsbeteiligungen A. G.
Peter Merianstrasse
Basel

Dear Doctor Sturzenegger:

As the year end nears, I take pleasure in thanking you for the courtesy and consideration accorded to me by you and your associates throughout our negotiations and to wish you a Merry Christmas and a Happy New Year.

I know that you will be interested to hear that real progress was made by Remington Rand in Washington this week. I was advised last night that the Department of Justice approved definitely and will issue to Remington Rand license for the purchase of the General Aniline and Film Company under stipulations I believe we shall find mutually satisfactory.

This license will be issued promptly upon the clearance by the Treasury Department in a few days of a General order signed by Attorney General Clark and forwarded by him to the Treasury Department regarding the disposition of Swiss Concerns requiring Swiss Compensation Office certification on which Remington Rand was successful in obtaining both Department of Justice and Treasury Department favorable action.

I am informed that the Treasury Department have told the Department of Justice and other authorities close to the White House that Remington Rand is the only company qualified to make a prompt settlement of the General Aniline and Film case with the Treasury and the Depart-

ment of Justice and that they are prepared to proceed promptly with Remington Rand in working out the settlement. The Remington Rand Co. is the only one to whom no objection has been raised and it has been decided to work with Remington Rand and no other company. In this decision it is recognized that Remington Rand already owns a substantial share in the General Aniline and Film Co. and also in the parent Company. Remington Rand together with the U. S. Government own over 51% of the parent company in terms of equity of capital stock. It is planned that the Remington Rand representatives sit down with the U. S. Government authorities and work out the procedure of assuring General Aniline and Film coming into the hands of the Remington Rand Co. The compromise agreement which will be worked out will be approved by the Federal Court and will be final.

2364 The American Aniline and Chemical Company was organized on December 19th by the Remington Rand Co. to take over GAF. Remington Rand will own over 75% of the stock in this Company. AA&CC owns today over 6000 fully paid Chemie shares, 21,400 fully paid shares formerly owned by Norsk Hydro, over 7000 shares of General Aniline and Film A common, besides other options.

It is planned that a United States institution known as the Public Health Foundation for Cancer Research will own about 20% of the common stock in AA&CC by purchase. Obviously 1/5 of the earnings of AA&CC will therefore go for public welfare. This plan was received with enthusiasm by the U. S. Government authorities and it was a deciding factor in obtaining Government approval for the deal.

I think you will also be interested to know that on December 19th General Aniline and Film voted to omit fourth quarter dividend. The reason given was that cash on hand was required for expansion although it is common talk on the street that GAF has been losing ground to concerns such as Dupont, Eastman and Monsanto with bad affect

on its future profit outlook. That is just another reason why the settlement of GAF should be expedited. Remington Rand is in a position, due to the standing the Company has created in Washington, to make a prompt settlement with the Treasury Department and the Department of Justice and I look forward to a meeting with you to go into details, right after January 1st, or even at an earlier date, if the license is cleared before then.

Please consider the information in this letter confidential and only for yourself and your associates.

With kind personal regards,

Sincerely yours,

LEO NEMZEK
Vice-President, Remington Rand Inc.

Carbon Copy for
Dir. F. Richner

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2377 Filed Jul 20 1950

Plaintiff's Exhibit No. 2A.

TRANSLATION

Confidential, not to be passed to third parties.

Dr. Walter S. Schiess
Basle
Freiestrasse 111.

9.4.47.

Remarks on the negotiations between the firm Remington Rand Inc., New York, on one side, and the Internationale Industrie- & Handelsbeteiligungen A.-G., on the other, regarding the conclusion of an option contract in respect of Interhandel's participation in the General Aniline & Film Corporation.

I.

Since June/July 1946 there exists a gentlemen's agreement between Interhandel and Remington Rand with regard to the acquisition of Interhandel's participation in the General Aniline & Film Corporation. This gentlemen's agreement has been reconfirmed by a letter from Interhandel dated 18th March, 1947. It is still in force and can be terminated at the earliest at any time after 15th April, 1947, under observation of a period of notice of fourteen days. Interhandel has precised its intentions in the following manner in a further letter dated 20th March, 1947:

a. that the option in question would be given in writing.

b. that apart from this the gentlemen's agreement has the significance that the price, in respect of which agreement has been reached, will not be discussed further and that Interhandel will not take the initiative to begin negotiations with other private interested parties.

2378 2. Remington Rand requested Interhandel as early as January 1947 to convert the gentlemen's agreement into a written option contract. For this option contract Remington Rand submitted a written proposal. For reasons of principle the board of directors of Interhandel still believes that it cannot enter into the discussion of this option contract.

3. Remington Rand needs this option contract for three reasons:

a. After receipt of the option contract R. R. will undertake to attempt for Interhandel, without cost, to devest Interhandel's GAF participation (to free it from confiscation by the Alien Property Custodian). According to the option contract R. R. could only acquire Interhandel's GAF participation after it has been released to Interhandel by the American authorities. However, in order to assure the americanization of the GAF, the American government demands that R. R. should create an unquestionable legal basis for itself on the basis of which R. R. can in any circumstances demand from Interhandel the transfer of the

GAF shares to R. R. after the devesting, against payment in Switzerland.

b. The option contract is an absolute necessity for R. R. as well. Since up to now R. R. has not shunned any trouble or any expense in order to acquire the GAF participation from Interhandel on the agreed conditions, the personalities who are responsible for the decisions of R. R. cannot continue in their efforts, because of their responsibility to the ca. 30,000 shareholders of R. R., insofar as they have not also the binding guarantee that if they should be successful in the devesting of the GAF, R. R. has the
2379 right to acquire GAF at the agreed price and on the agreed conditions.

c. The option has then still a third significance. It has to make it clear to the American authorities that from the moment the option is signed the interests of R. R. and those of Interhandel are identical.

II.

In judging whether the granting of such an option contract is in the interests of Interhandel, the following circumstances must be considered:

1. According to the regulations valid in the U. S. A. Interhandel is no longer owner of the GAF shares. Interhandel's GAF shares were vested in the year 1942 (vesting order). Afterwards they were annulled. In place of these, new shares have been issued by the present administration of the GAF. Interhandel's sole property today is a claim for return of the shares against the government of the United States. According to American law it has at present lost the ownership of its participation.

2. In order to get its GAF shares back, Interhandel has to institute a suit before the Federal Court in Washington against the government of the United States. It is permissible to refer to the difficulties which must be anticipated in conducting such a suit. With this, however, I do not mean to express any doubts as to Interhandel's legal

position. Reference must merely be made to the dangers and risks which are involved in every suit against the U. S. A. government.

In judging the chances of the suit one must take as point of departure that the judges who will have to decide the suit will probably be personalities who have been
2380 newly placed in their offices in the last few years by the government. They will have a certain tendency to decide in favour of the government rather than against the government in cases of doubt. Every practising lawyer in the U. S. A. will have to confirm that it is especially difficult to carry through successfully important suits in face of the various possibilities of influence of the administrative authorities. Therefore, Interhandel is in a difficult position, particular too for this reason, because, although the burden of proof lies with it, it is not completely acquainted with the material. The contracts which GAF concluded with I. G. Farben are not sufficiently known to it. All connections which existed between I. G. Farben and GAF are also only apparent from the GAF archives to which Interhandel has no access at present. Apart from this the government of the U. S. A. has searched all the I. G. Farben archives in Frankfurt and has collected for the case all the material incriminating the GAF. The two most important witnesses in the Interhandel suit, Messrs. Duisberg and Schmitz are now definitely also of the opinion that Interhandel should grant the option to Remington Rand to protect its interests. The chances of the suit are also judged to be uncertain by these gentlemen.

3. During the second world war it was established in the United States as a principle of the national policy, that in future the whole war industry, and particularly the chemical industry in the U. S. A., must be americanized. The experiences during the last two wars and the uncertainty of the present time make it appear certain that both the administrative authorities and also perhaps the judicial authorities, will do everything possible within the framework

of the law in order to realize this principle. Even if the present democratic government should be replaced by a republican one, it can be expected that nothing of
2381 this principle would be altered. It is not contested in any way between the parties. The officials of the various departments will also take care that the continuity of this national principle is preserved. It is certain that this principle will be applied to its full extent just to the GAF. As the operations of I. G. Farben in the U. S. A. have been declared extremely disastrous in the construction of the American war economy, this principle will certainly be followed for the GAF, the so-called former subsidiary company of I. G. Farben. This psychological situation will have a radical influence on the outcome of the suit. In addition it must be considered that the circumstances of Interhandel's ownership of GAF shares are not incontested today. Certain share packets which belonged to Dutch nominees were claimed during the war by the Dutch government as belonging to German firms in Holland. The Dutch government has filed a claim with the A. P. C. The chances of this claim are doubtful. However, an attempt by the Dutch government in this respect must be anticipated.

III.

1. R. R.'s negotiations with Interhandel have suffered since June 1946 from the fact that the American government had not yet established its policy in respect of the realization of the vested enemy properties. R. R. received first of all a licence to negotiate. On the basis of this licence it could conduct negotiations but could not conclude a contract with Interhandel.

Subsequently the A. P. C. believed himself able to carry a bill through Parliament by which it should be made impossible for non-Americans to recover the vested
2382 properties in natura and by which non-Americans were reduced to a mere claim for compensation on the American government. Remington Rand strove suc-

cessfully to convince the American parliamentarians that such a bill must not be introduced. These efforts were extraordinarily far-reaching and comprehensive.

Today there still exist tendencies to take up this bill again eventually.

If in another suit which is pending before the Supreme Court (Ueberseehandels A.-G.) the American government—as may be anticipated—should lose, the administrative authorities are possibly again prepared to resume the struggle over the bill in Parliament. In this case the representatives of the government would only be too thankful if they were no longer opposed by the representatives of R. R.

2. Subsequently R. R. negotiated for a long time with the Treasury Department regarding the granting of a licence to conclude a contract with Interhandel. Such a special licence was never granted. In November the Treasury Department announced, on the other hand, that there now exists a general authorization to conclude contracts with Interhandel. In this announcement the Treasury Department explicitly referred to the Claims Act.

The assignment of claims act contains the following decisive stipulation:

"All transfers and assignments of a claim against the United States or any part of such a claim or of an interest in such a claim whether absolute or conditional, and independently of what counter-value is paid and all authorizations to receive payments for such a claim, are absolutely null and void insofar as they are made before the claim is recognized by the American government."

It may be perceived in the meaning of this law that it is to be avoided that the American government has to
2383 negotiate with one or more persons regarding a claim. The assignment of a claim in the sense of the law does not make a claim invalid. The invalidity is limited to the declaration of assignment. An option of a person entitled to claim to acquire the proceeds of his claim against the United States is legally admissible. Rem-

ington Rand would not come into conflict with the Claims Act through an option to acquire the GAF shares. The acquisition on the strength of an option which can be exercised or not does not represent the acquisition of a claim on the basis of which money or real values can be demanded from the American government. Consequently, because of of the Claims Act the form of an option had to be chosen.

3. During the term of the option (proposal R. R. 31st December, 1947) Interhandel is in no way prevented from preparing the suit against the American government for return of the GAF shares. R. R. necessarily has to do everything, in its own interests, to assist the preparations for this suit as far as possible.

4. The option provides as one of the conditions for its assertion that the purchase price for the GAF participation, regarding the amount of which the parties have reached a final agreement, must be paid in Switzerland. R. R. is prepared without more ado to insure Interhandel against the option price, after release of the shares, being subjected once again to any sort of restrictive measures in America.

The carrying through of the option will demand great efforts and much trouble on the part of the decisive R. R. gentlemen. It is clear that the gentlemen have only declared themselves prepared to do this because they anticipate with absolute certainty that they will be successful in their efforts. Whether the success can be achieved by means of a diplomatic intervention or by means of other moves cannot be said today by R. R. for comprehensible reasons.

2384 5. It is clear that as well as R. R. there is a whole series of other interested parties which are interested in the acquisition of Interhandel's GAF shares. Most of the most important interested parties are eliminated because of the stipulations of the Anti-Trust Law or because of earlier contacts with I. G. Farben. Other interested parties, namely bank groups, would certainly be interested in the GAF shares as long as these shares could be offered to

them for purchase deblocked and devested. However, it is unlikely that another notable interested party will appear which will declare itself prepared to undertake the whole cost and all the trouble of the devesting on its own risk. During the whole duration of the option a close contact between R. R. and Interhandel will be indispensable. R. R. has expressed the desire that during this time Direktor Germann should come frequently to New York where an office will be placed at his disposal and where he will be given all necessary support and assistance.

6. The granting of a power of attorney is necessary for the technical execution of the option. It is provided in the draft for the power of attorney that there should appear a close connection of the power of attorney with the actual economic interest in order to give the power of attorney, as far as possible, the character of an irrevocable tie. R. R. recommends that not only one authorized person but two, a lawyer of Interhandel and a lawyer of R. R., should be jointly inserted. It justifies this by the common interest which both parties to the contract have in the result of the efforts. When the option is once signed, the whole future relationship between R. R. and Interhandel is finally and irrevocably established. The authorized persons will merely have to carry out arrangements which are necessary to achieve the common aim. No conflict of interests will exist any more.

2385 IV.

1. It is of particular importance to refer to the fact that Interhandel should come to a decision as soon as possible regarding the granting of an option. The vesting of Interhandel's interests first took place in February 1942. The suit against the government must be instituted within 6 years, consequently by February 1948. (It still has to be cleared up whether the date of the Vesting Order June 1942 is not the proper date for this). However, through the preliminary negotiations R. R. received the impression that

today the americanization of the GAF can be striven for in the manner proposed with some prospects of success. As it must now be anticipated that government officials will try to avoid as far as possible during the election year decisions which could be reproached them in the election fight, it is indispensable that R. R. should be placed in the position, by a speedy granting of the option, to continue its efforts immediately.

2. The present situation of the GAF has continually deteriorated economically during the course of the years. Although in America there is a boom just in the GAF's sphere of production, the proceeds have diminished. The Ansco section which, since 1925, had shown itself to be profitable, is operating at a loss. The dye-stuff branch can by no means in the long run remain as profitable as today. Other branches have to be made accessible. The GAF is particularly dependent on the development of new special products which can be patented. The GAF has lost the I. G. contract which was once valued on the part of America at more than 20 millions. In consequence of the war the GAF today disposes of practically no know-how or secret processes which have not become known to all its competitors. As consequence of this and of the general uncertainty with regard to the future of the business, various technical cooperators have already left the firm; others are on the point of doing so. The former excellent technical director of the General Aniline works division has died in the meantime. The business management of the firm is insufficient on the strength of decisive judgments. R. R. has an interest to take over the management of GAF either soon or not at all. R. R. is endeavouring to retain the good forces in the firm (similar dangers as in the Alpar).

2386

3. The patent situation also demands a speedy decision. Nobody knows the whole patent situation as exactly as R. R. As consultant of R. R., Mr. Duisberg has during the whole year drawn up a report over this. No other inter-

ested party should dispose of correspondingly good information. All people aware of the situation are of the opinion that action should be taken at once, also in order to secure and extend certain patent positions. Moreover, there exists the danger that the patents are made available to the public. The last time this danger was able to be delayed by R. R. in that it convinced the A. P. C. that the distribution of the patents would destroy great economic assets and must thus have unfavourable effects on any public sale which may become necessary. In future it must also be anticipated that a minimum of $3 million per year is to be used for research.

4. The uncertainty of the actual stock exchange situation also urges a speeding up of the whole matter. The preliminary negotiations for the financing which R. R. has conducted and the guarantees in respect of the transfer of the sale proceeds to Switzerland cannot be maintained for an indefinite time.

2387

V.

1. R. R. has already founded a company in America, the American Aniline & Film Corporation, to take over the GAF participation. At the foundation of this company an amount of 30% of the basic capital was put on one side which will be placed at the disposal of charities (combatting cancer). With this Mr. R. Rand is demonstrating an attitude which he has already taken before in the most varied spheres. Charitable questions were always of great concern for him. In connection with the GAF question it can be anticipated with some probability that the dedication of such a high percentage for charitable purposes will also be considered by the authorities in their decisions. Thus there appears here as well as R. R. an independent 30% shareholder serving public purposes, a fact which will be welcomed by the U. S. government.

2. The decision of the American authorities in respect of the GAF will also be taken very earnestly into consid-

eration in the decisions which the Norwegian government takes in respect of the vesting of Interhandel's participation situated in Norway. Insofar as R. R. is successful in achieving the devesting in America, Interhandel should also have advantages from this in respect of this other vested asset which should certainly be considered in the decision.

3. In conclusion reference must be made to the fact that the overall question is less a question to be decided according to legal principles than a question of business policy. The various business risks concerned must be balanced against each other. R. R. is, as results from its efforts up to now

—for the receipt of the business value of the GAF,
—for an understanding with the managing personalities of the GAF
2388 —with the parliamentary and political authorities in Washington—

interested in obtaining the devesting of the GAF assets. Whether this way offers numerous advantages for the Swiss shareholders of Interhandel which a direct controversy with the American government can never offer must, in our opinion, be weighed up exactly.

Dr. W. S. Schiess.

Basle, 19th March, 1947.

• • • • • • • • • •

2464 Filed Jul 20 1950

Plaintiff's Exhibit No. 8.

Oct. 18, 1946

98536

Dear Mr. Truitt:

Reference is made to your letter of October 14, 1946 addressed to the Secretary of the Treasury and to the application filed on behalf of Remington Rand, Inc. on the

same date. Copies of your letter, the application and other attachments were forwarded by us to the Department of Justice for its information. The Department of Justice has now informed us that on October 2, 1946, Remington Rand, Inc. submitted to that Department a proposal which differs substantially from the present application and it has transmitted to us a copy of that proposal.

We desire that you advise us whether you regard your present application and your proposal of October 2 to the Department of Justice as being, in effect, alternative applications. If you desire to withdraw either of your proposals will you please so advise us.

There are certain other matters in your letter of October 14 on which we also desire clarification. You will recall that your letter contains a sentence which reads, in part, as follows: "* * * the applicant is informed that foreign interests, particularly Russian and British, are at this time endeavoring to negotiate for a similar option to purchase the interest of I. G. Chemie in the vested G. A. F. stock." You will recall that this assertion in one form or another has been made previously on behalf of Remington Rand, Inc. We have from time to time endeavored to obtain some statement as to the factual basis, if any, on which this statement is made. In this connection, and at his request, a meeting was held with Mr. Shorten, Vice President of Remington Rand, Inc. on September 17 to allow him to give us information on this score. Mr. Shorten's statements at that meeting related only to abortive preliminary negotiations allegedly on behalf of Russian interests and which failed to come to fruition some two years ago. Although Mr. Shorten asserted that he believed that
2465 there is a present Russian endeavor to acquire interests in G. A. F. he did not present any facts in support of his belief despite repeated inquiries by members of this Department. We are also without reply to our letter of September 25 to Mr. Shorten in which we asked that we be furnished with complete and detailed information with

respect to the alleged British endeavors to acquire an interest in G. A. F. and the source of such information.

In the event that you desire that this Department place reliance on the allegations made with respect to the likelihood of the British and Russian acquisition of interests in G. A. F. you should furnish us with the factual data which has been previously requested.

Your attention is also directed to the paragraph numbered 6 in your letter of October 14 from which it appears that there may presently exist options, contracts or other agreements between Remington Rand and I. G. Chemie. If such options, contracts or agreements do, in fact, exist you are requested to furnish copies of them to this Department for use in connection with the consideration of your application. To the extent that such options, contracts or agreements may be oral you may describe their contents.

We should also like to call to your attention that we have from time to time requested that we be furnished with certain information with respect to holdings of I. G. Chemie stock or other securities by Remington Rand, Inc. and that we are without reply to these requests for information. In this connection reference is made to our letter of October 15 addressed to Mr. Shorten.

Sincerely,

/s/ J. S. Richards
Acting Director

Mr. Max O'Rell Truitt
Cummings & Stanley
1616 K Street, N. W.
Washington 5, D. C.

cc: Mr. William E. Shorten

2466 Filed Jul 20 1950

Plaintiff's Exhibit No. 9.

Homer Cummings
William Stanley
Max O'Rell Truitt
J. Edward Burroughs, Jr.
Mac Asbill
William D. Donnelly
William P. Arnold
Cary McN. Euwer (on leave)
W. Lawrence Keitt

CUMMINGS & STANLEY
1616 K STREET, NORTHWEST
WASHINGTON 6, D. C.

October 21, 1946

Honorable John S. Richards
Acting Director
Foreign Funds Control
Treasury Department
Washington, D. C.

Dear Mr. Richards:

This is in response to your letter of October 18, 1946, No. 99536, which was received in our office in this morning's mail. Since its receipt Mr. Shorten, Vice President of Remington Rand Inc. and Mr. Keitt, my associate, have conferred with Messrs. Overby and O'Connell. This conference was with reference to your letter of October 15, 1946, requesting certain data regarding I. G. Chemie holdings by Remington Rand and/or its nominees. A letter has already been delivered to Messrs. Overby and O'Connell today, together with a separate letter covering Remington Rand and/or its nominee's interest in General Aniline & Film, in reply to your letter of October 15.

With reference to the first paragraph of your letter of October 18, please be advised that neither Remington Rand Inc. nor its counsel ever submitted to the Department of Justice any proposal of any sort seeking a license from the Treasury Department. The undersigned, with associate

counsel for Remington Rand, held three exploratory conferences with Mr. Sonnett and two of his assistants, in an effort to find some common ground for progress in the consideration of our license application.

Referring to the second paragraph of your letter, we made no proposal to the Department of Justice on October 2, or any subsequent date, and, therefore, have no alternative application to withdraw.

Referring to the third paragraph of your letter, Messrs. Shorten and Keitt discussed with Messrs. Overby and O'Connell today that portion of your letter of October 18 which refers to the statement in our letter accompanying the application for a license filed on October 14 with the Treasury Department, that British and Russian interests are endeavoring to negotiate for an option similar to the one we seek. I am not able to comment on that portion of your letter relating to the meeting on September 17 as I was not present at that meeting. The information referred to in the letter accompanying the application
2467 was secured, I believe, from reliable and trustworthy sources. Mr. Shorten advises that the facts of the matter seem to be common knowledge among those persons in Switzerland interested in the proposed option.

Referring to the fifth paragraph of your letter, you direct my attention to a paragraph numbered 6 in my letter of October 14. This question appears to be based on your original assumption that we filed an application with the Department of Justice. However, a much more direct approach would have been to ask me if there presently existed any options, contracts or other agreements between Remington Rand and I. G. Chemie. There are no presently existing options, contracts or other agreements between Remington Rand and I. G. Chemie. Moreover, I do not agree that it appears from paragraph 6 of my letter that there may presently exist any such options, contracts or other agreements. My language in that paragraph was merely a comment on the proposal suggested by Assistant Attorney General Sonnett.

The last paragraph of your letter has been covered above.

Inasmuch as you have sent a copy of your letter to Mr. Shorten and apparently our earlier letter to the Department of Justice, I am having dispatched by messenger today copies of this letter to Honorable John F. Sonnett, Donald Cook, acting head of Alien Property Custodian's office at the Department of Justice, and Mr. W. E. Shorten.

Very truly yours,

MAX O'RELL TRUITT

cc—Hon. J. F. Sonnett
Mr. Donald Cook
Mr. W. E. Shorten

mot:nc

• • • • • • • • • • •

2491 Filed Jul 20 1950

Plaintiff's Exhibit No. 13A.

TRANSLATION

SWISS COMPENSATION OFFICES
ZUERICH

Börsenstrasse 26.

Telephone: 7 27 70 & 7 59 30 Telegraphic address CLEARINGSTELLE

BY REGISTERED MAIL

To the DIRECTION of the
Industrie-Gesellschaft für
Chemische Unternehmungen,
Basle.

Zürich, 15th November, 1945.

We refer to our letter in which we confirmed to you our telegram with regard to putting your company provisionally under the resolutions of the Federal Council concern-

ing the blocking of German assets in Switzerland and in addition herewith inform you of our decision in writing:

On the instructions of the Federal Department of Public Economy, your company is subjected to the Decrees of the Federal Council concerning the blocking of German properties in Switzerland, in the meaning of Art. 9, clause 3 of the Decree of the Federal Council of 16.2.1945 as amended 27.4.1945.

The provisional putting under the blocking provisions is due to the fact that in the opinion of the Federal authorities the examination report of the Compensation Office has not produced enough facts to be able to destroy all misgivings regarding the complete severance of your company from the I. G. Farben Industrie A.-G., with which it is indisputable that it was formerly closely connected. Moreover, new facts have come to the knowledge of the Compensation Office which induced them to supplement the investigation. In view of these circumstances your company had to be provisionally subjected to the blockade in the meaning of the stipulation cited above.

You may appeal against this decision and the 30-day period for appeal commences from the receipt of this letter.

Yours truly,

SWISS COMPENSATION OFFICE
sigs.

• • • • • • • • • •

2494 Filed Jul 20 1950

Plaintiff's Exhibit No. 14B.

TRANSLATION

SWISS COMPENSATION OFFICE
ZUERICH

Börsenstrasse 26

Telephone: 27 27 70
(051)
27 59 30

Telegraphic address: CLEARINGSTELLE
Post Box: Zürich 2 Fraumünster

Internationale Gesellschaft für
Chemische Unternehmungen A.-G.
(I. G. Chemie)
Peter Merianstrasse 19,
Basle.

BLOCKADE OF PAYMENTS GERMANY

Your ref.:	Your letter of:	Zürich, Börsenstrasse 26,
—	—	30th October, 1945.

Re: Blockade on German assets according to the Resolution of the Federal Council of 16.2./27.4./3.7.1945.

We confirm the telegram with following text addressed under today's date to the president of your board of directors, Dr. Felix Iselin, Sternengasse 2, Basle:

"with immediate effect the Resolutions of the Federal Council of 16 February, 27 April and 3 July 1945 concerning the preliminary regulations of payments between Switzerland and Germany are declared applicable to all payments and to the disposition/conveyance over properties of any sort of I. G. Chemie. Letter following."

We are sending you enclosed a general authorization to carry on your business to its former normal scope and extent.

Yours truly,

SWISS COMPENSATION OFFICE
sigs.

Enclosure:
1 authorization
Form No. 10951 a.

2495 Filed Jul 20 1950

Plaintiff's Exhibit No. 140.

SWISS COMPENSATION OFFICE
(Name in German, French & Italian)
ZURICH

Zurich, October 30, 1945

AUTHORIZATION

The Swiss Compensation Office authorizes the Internationale Gesellschaft fur chemishe Unternehmungen A. G. (I. G. Chemie), Peter Merianstr. 19, Basel. .....
.....
which falls under the regulations of Article 2, paragraph 2, of Federal Council's resolution of February 16/April 27, 1945, in the wording dated July 3, 1945, to make payments within Swiss territory for salaries, expenses, taxes and for suppliers, within the present limits of normal business activity, and to dispose to this extent of its credit balances and merchandise in stock, as well as to accept payments. Payments abroad are permitted only as far as they are made by payment to the Swiss National Bank within the limits of a Clearing and Payment Agreement, which was entered into by Switzerland, the notice "payment to the debit of blocked accounts" having to be put on the first sheet, which is to be filed with the Swiss Compensation Office; other payments abroad are subject to approval by the Swiss Compensation Office.

This authorization is valid as long as a new regulation has not been set up by other executive prescriptions to Federal Council's Decree of February 16/April 27, 1945, in the wording dated July 3, 1945. The Swiss Compensation Office calls attention expressly to the liability for double payment (Article 8) and to the penal prescriptions (Article 10) of the Federal Council's Decree, which apply to improper utilization of this authorization as well.

The authorized firm or group of persons has the duty to report to the Swiss Compensation Office the total amount of all payments made under any legal title whatsoever every three months—the first time for the period running from February 17 to March 31, 1945—, payments of the same kind having to be put together and comprehended (e. g. salaries, wages, office costs, taxes, purchase of merchandise and so on) in the statement referring to this. The Swiss Compensation Office will bill for the respective fees due to it (compare Article 9 of Federal Council's Decree of February 16/April 27, 1945, in the wording dated July 3, 1945).

2496

The answers required (crossed out in the original—"in the enclosed questionnaire) *have to be presented to the Swiss Compensation Office within 14 days.

SWISS COMPENSATION OFFICE

1 Enclosure (stricken out) (two signatures)
Form No. 10951 a.

* respectively your first settlement of accounts, separated in quarters and beginning with the period running from February 17 to March 31, 1945, . . .

• • • • • • • • • • •

2634 Filed Jul 20 1950

Plaintiff's Exhibit No. 20.

17.5.47

"Via Radiosuisse"

J H Rand President Remington Rand Inc
Stamford Connect. USA

received your cable 5th stop very much disappointed by your attempt to distort our gentlemens agreement stop reject the idea that any contract between ourselves and remington or aacc or anybody else of your group exists as main preceding conditions of gentlemens agreement are not at all fulfilled stop reserve unto ourselves all possible positions in support of our standpoint and in denial of the effectiveness of the action attempted by you stop as to aacc we reject the idea of their being a participant in our discussions or a party to our gentlemens

Rechnung 30

2635 agreement which by its very nature was strictly personal and not assignable stop we decline to regard aacc as an acceptable participant with us in the contemplated gaf deal stop today we have written two letters to mr richner which might be translated as follows german text to be considered as sole original version first letter quote reference is had to the cable from aacc dated may 5th receipt of which has been separately acknowledged stop we were very much surprised to receive this cable which to us seems ill-advised stop we beg to inform you that we must decline to recognize both the offer and election and the alleged acceptance of aacc referred to and made in the

2636 forepart of the cable stop Moreover we cannot regard aacc as having participated in any way in our discussions or in the subject-matters thereof stop we deny that such action on the part of aacc as described in the cable constitutes a contract between us or that a contract exists between ourselves and aacc or remington or that we have

any liability of any kind to aacc or remington or to anyone else in the premises stop finally we wish to state that we reserve unto ourselves all possible positions in support of the foregoing and in denial of the effectiveness of the attempted action by aacc stop as to our readiness to continue our discussions with remington as expressed in our letter to mr bill shorten vice-president of remington of
2637 april 21 1947 we have to state that this readiness is now subject to the acknowledgement by remington that no agreement of whatsoever kind is existing between us and remington or any alleged assignee or representative of them since the expiration of the gentlemens agreement on may 6th 1947 stop unquote second letter quote infurther reference to the cable from aacc dated may 6th we beg to inform you that we would have to reject the idea of a violation by us of our gentlemens agreement if such a reproach would be raised by you or remington stop coming from aacc as it did in the latter part of the cable it is irrelevant stop unquote

Interhandel

* * * * * * * * * *

2640 Filed Jul 20 1950

Plaintiff's Exhibit No. 23.

AMERICAN ANILINE & CHEMICAL COMPANY, INC.
ROOM 1428
165 BROADWAY NEW YORK 6, N. Y.

May 28, 1947

International Industrie und Handelzbeteiligungen, A. G.
Basle, Switzerland.

Sirs:

Mr. James H. Rand, Jr. has transmitted to us a copy of your cable, dated May 19, 1947.

The option to which your cable refers has been validly assigned to us by Remington Rand Inc. and has been exercised and accepted by us within the time provided and upon

the terms thereof and we shall hold you to a strict accountability to keep and perform your obligations to us by delivering the securities to which we are now entitled. Upon such delivery we will pay to you the stated purchase price.

It is a matter of regret that your decision to terminate the option as of May 6th last compelled us to exercise our rights prior to such date but that was your decision and our election necessarily followed within the time fixed by you.

Awaiting your prompt reply, we are

Very truly yours,

AMERICAN ANILINE & CHEMICAL COMPANY, INC.

By S. PROCTOR BRADY
President

* * * * * * * * * *

2659 Filed Jul 20 1950

Plaintiff's Exhibit No. 26.

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY

Pursuant to 28 U. S. C. Sec. 1733, I hereby certify that the annexed paper is a true copy of the original record which is in the official custody of the Office of Alien Property, Department of Justice, to-wit:

A letter dated November 22, 1946, addressed to Dr. Petitpierre, Chief, Federal Political Department, Government of Switzerland, by John W. Snyder, Secretary of the Treasury, relative to the inclusion of Switzerland within General Licenses Nos. 94 and 95, together with Dr. Petitpierre's reply to Secretary Snyder dated November 22, 1946.

IN WITNESS WHEREOF, *I have hereunto caused the seal of the Office of Alien Property Department of Justice to be affixed and my name*

subscribed by the assistant Secretary for records of the Office of Alien Property, Department of Justice, on this thirteenth *day of* February *19* 50.

(SEAL) DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY

For the Attorney General
HAROLD I. BAYNTON
Acting Director,
Office of Alien Property,

By LOYOLA M. BLANTON
Assistant Secretary
for Records.

2660 LETTER FROM SECRETARY OF THE TREASURY SNYDER TO DR. PETITPIERRE, CHIEF, FEDERAL POLITICAL DEPARTMENT, GOVERNMENT OF SWITZERLAND.

November 22, 1946

My dear Mr. Federal Councillor:

As indicated in recent discussions with representatives of your Government, this Department is prepared to institute a procedure for removing the blocking controls now being exercised with regard to Switzerland and Liechtenstein under Executive Order No. 8389 and the Trading with the enemy Act of 1917, as amended. This procedure will be instituted by including Switzerland and Liechtenstein within the benefits of General Licenses Nos. 94 and 95.

The general effect of amending General License No. 94 to include Switzerland and Liechtenstein will be to license all transactions by, or on behalf of, Switzerland or Liechtenstein or their nationals so long as such transactions do not involve either assets in which, on the date of the amendment, Switzerland or Liechtenstein or any person therein had an interest, or any income accruing on such assets. As previously indicated to your Government, a special section will be added to General License No. 94 under which the

provisions of General Ruling No. 17 will continue to be applicable to blocked property in the accounts of banks and financial institutions located in Switzerland and Liechtenstein until the property is certified under General License No. 95. The certification of assets under General License No. 95 will automatically render the provisions of General Ruling No. 17 inapplicable with respect to such assets.

The inclusion of Switzerland and Liechtenstein in General License No. 95 will make it possible for your Government, subject to the conditions of that license and of this letter, to effect the complete release of blocked property held in the names of persons within Switzerland or Liechtenstein if such property is eligible for certification. In addition, this Department will issue licenses which will permit the unblocking by certification of property held in General Ruling No. 6 accounts which were established pursuant to the provisions of General Ruling No. 17.

The action indicated above will be taken as soon as I am assured that the conditions set forth below are accepted by your Government.

1. The Government of Switzerland will assume full responsibility for carrying out the procedure of certification provided by General License No. 95. No property will be certified until the Swiss Government has ascertained by an appropriate investigation that the property is not excluded from the benefits of the license. In this connection, the Swiss Government will particularly investigate not only the ownership of stock and other interests in financial institutions, holding companies, foundations, family trusts, and the like, but will also examine separately the ownership of the assets held by such organizations and institutions since they may be acting as agents or cloaks. Moreover, in regard to property which may from time to time be
2661 specifically designated by this Department, the Swiss Government will consult with this Department prior to making the certification provided for in General License No. 95. It is understood that consultation will be held with

respect to operating problems which may arise from time to time under the arrangements set out in this letter with a view to arriving at mutually satisfactory solutions and ensuring the smooth operation of the procedure.

2. In determining whether cash accounts maintained here in the names of banks and other financial institutions in Switzerland or Liechtenstein are eligible for certification, it will be considered that persons maintaining dollar accounts with such institutions have an interest in corresponding portions of the accounts in this country. In addition, persons having stock or other interests in any holding company, investment trust, foundation, family trust, or similar organization or institution will be considered as having a direct proportionate interest in the assets owned by the organization or institution, regardless of the formal nature of their interest, but this principle shall not be deemed to authorize the certification of any assets held by any such organization or institution which itself is ineligible for certification.

3. It will be understood that no certifications will be issued which

(a) would facilitate the completion of transactions which would further the interests of an enemy of the United States as defined below or of persons acting upon behalf of an enemy; or

(b) would change the status of blocked property in the United States in which on or since the effective date of the Order an enemy has had an interest, direct or indirect.

4. As to the property of any partnership, association, corporation or other organization established under the laws of Switzerland or Liechtenstein which, by reason of the interests of persons not resident in Switzerland or Liechtenstein, is also a national of another foreign country designated in the freezing Order as defined in General License No. 95, no certification will be made until full assurances have first been obtained from the government of

the other country to the specific effect that no national of Germany, Japan, Bulgaria, Hungary or Rumania other than one who is entitled to the privileges of General License No. 95 is involved in the ownership or control of such interests. For reasons of simplification, however, the Swiss authorities may, on their own responsibility, certify property of any such organization in which the proportion of such interests is less than 25%.

With respect to any property not covered by the preceding paragraph in which any other country specified in General License No. 95, or any national thereof, has an interest,

2662 the Swiss Government will not certify until full assurances have been obtained from the other government that such interest itself is entitled to certification under the license. It will not be necessary, however, to obtain such assurances where the value of the property involved is less than $1,000.

5. If property in which there is an enemy interest is certified under the license inadvertently or by mistake, this Department will be consulted and, at its request, your Government will take appropriate measures to ensure that such property or its equivalent will be restored to the account in which it was held before being certified or to such other account as this Department may designate, but only to the extent to which such property or its equivalent may be found among the assets of the first acquirer or the original owner. It is agreed that there will be joint consultation in specific cases in which this Department has reason to believe that property has been improperly certified.

6. Immediately following the inclusion of Switzerland and Liechtenstein in General License No. 95, the Swiss Government will require each bank and other financial institution in Switzerland and Liechtenstein to transfer to a special blocked account in the United States in the name of the Swiss National Bank any property held in the accounts of such bank or financial institution in which any of the following has or has had an interest on or since the effective date of the Order:

(a) The pre-Armistice Governments of Germany and Japan and any agency, instrumentality, or representative of either such government;

(b) Any citizen or subject of Germany or Japan within either such country or any such person in Switzerland or Liechtenstein who is to be repatriated:

(c) Any partnership, association, corporation, or other organization which is organized under the laws of, or which at any time on or since December 7, 1941, has had its principal place of business in, any territory of Germany or Japan.

The property to be transferred will include any securities in which on or since June 14, 1941, any such government or person has had an interest and a sufficient amount of cash to cover fully any dollar accounts maintained on the books of the bank or other financial institution at any time on or since June 14, 1941, in which any such government or person has or has had an interest, without deduction of outpayments excepting those made under license of this Department. In this connection, licenses to permit the above transfers will be issued by this Department coordinately with the amendment of General License No. 95.

7. The Swiss Government will make such investigations and take such measures as are necessary to ensure the segregation of all securities located in Switzerland or Liechtenstein which have been issued by the United States Government, its political subdivisions, and corporations
2663 organized under the laws thereof, regardless of the currency in which such securities are payable, which have been looted in countries occupied by the enemy or in which there is or has been a German or Japanese interest since the respective dates on which the freezing regulations of Switzerland were extended to Germany and Japan. A certification will be affixed to each security which is entitled to the benefits of General License No. 95.

8. The Swiss Government undertakes by appropriate means to obtain information concerning United States cur-

rency in Switzerland or Liechtenstein in which there is or has been a German or Japanese interest since the respective dates on which the freezing regulations of Switzerland were extended to Germany and Japan, and to segregate any such currency.

9. Your Government will supply to this Department full information with respect to any property held in the United States under the name of a person in Switzerland or Liechtenstein in which there is any reason to believe that there is or has, since the effective date of the Order, been any enemy interest, direct or indirect. Such information will be supplied on a current basis as rapidly as your Government shall have developed the pertinent facts. This will include complete details concerning the interests in property in the accounts of banks or other financial institutions in Switzerland or Liechtenstein which must be transferred in accordance with paragraph 6 above. There will also be supplied to this Department full information concerning any securities or currency segregated in accordance with paragraphs 7 and 8 above because of enemy interest. The ultimate disposition of property in which there is or has been an enemy interest will be determined at a later date.

For its part, this Department will currently supply your Government with information concerning persons it has reason to believe may have acted as agents or cloaks for enemies.

As used herein, the term "enemy" shall mean the following:

1. The pre-Armistice Governments of Germany, Japan, Hungary, Rumania, Bulgaria, or Italy and any agent, instrumentality or representative of any of the foregoing Governments;

2. Any individual within Germany, Japan, Bulgaria, Hungary, Rumania, or Italy except (a) any individual who is serving with or accompanying the armed forces of any of the United Nations, or (b) any individual who entered any such country after the respective Armistice other than an

individual who on and since December 7, 1941, has resided only in such countries;

3. Any individual who is a citizen or subject of Germany or Japan and who at any time on or since December 7, 1941, has been within the territory of Germany, Japan, Hungary, Rumania, Bulgaria or Italy or within any other territory while it was occupied or controlled by Germany or Japan other than an individual not within Germany, Japan, Bulgaria, Hungary, Rumania or Italy who is determined
2664 by the United States Treasury representative in Switzerland to be a bona fide victim of persecution by the German National Socialist or Italian Fascist Governments.

4. Any partnership, association, corporation, or other organization which is organized under the laws of, or which at any time on or since December 7, 1941 has had its principal place of business in, any territory of Germany, Japan, Bulgaria, Hungary, Rumania, or Italy; and

5. Any partnership, association, corporation, or other organization situated within any foreign country which is a national of Germany, Japan, Hungary, Rumania, or Bulgaria by reason of the interest therein of any government or person specified in this paragraph.

You will recall that the accounts of the Government of Switzerland and of the Swiss National Bank have already been unblocked. Accordingly, after a reasonable period following the inclusion of Switzerland in General Licenses Nos. 94 and 95, this Department intends to revoke General License No. 50. However, your Government will be informed of such action in advance.

I also wish to take this opportunity to point out that it will be necessary, after a reasonable period following the inclusion of Switzerland and Liechtenstein in General License No. 95, for us to take measures to deal with any blocked property standing in the names of persons within Switzerland and Liechtenstein which has not been certified by your Government. Before taking any such measures,

this Department will seek an exchange of views with your Government. To minimize the problem, it is suggested that your Government take immediate measures to encourage all such persons to make application to your Government for the unblocking of their property. This will help your Government promptly to determine whether the property is properly certifiable or whether it should be reported to this Department by reason of the enemy interest therein.

Sincerely,

(Signed) JOHN W. SNYDER

2665 LETTER FROM DR. PETITPIERRE, CHIEF, FEDERAL POLITICAL DEPARTMENT, GOVERNMENT OF SWITZERLAND TO SECRETARY OF THE TREASURY SNYDER.

November 22, 1946

My dear Mr. Secretary:

I have received your letter of November 22, 1946, in the following terms: [Text of Secretary Snyder's Letter].

I have the honor to inform you that my Government is in agreement with the terms of your letter.

Sincerely,
(Signed) DR. MAX PETITPIERRE

2693 Filed Jul 20 1950

Intervenor's Exhibit No. 1.

TREASURY DEPARTMENT, WASHINGTON

Foreign Funds Control
In reply please refer to: 95939 Jun 14 1946

W-2878

Dear Sirs:

Reference is made to the application dated May 31, 1946, submitted to the Department through the office of Mr. Max O'Rell Truitt of this city for a license to confer and negotiate in Switzerland with officers and stockholders of I. G.

Chemie in connection with the sale of certain shares of General Aniline and Film Corporation vested by the Alien Property Custodian.

This letter will serve to authorize, so far as Executive Order No. 8389, as amended, is concerned, and notwithstanding General Ruling No. 11, Mr. William E. Shorten and/or other employees of your company as well as one of the attorneys of your company to confer and negotiate in Switzerland with officers and stockholders of I. G. Chemie in connection with the shares of General Aniline and Film Corporation vested by the Alien Property Custodian. The foregoing conferences and negotiations are, however, authorized only to the extent that they conform with your application of May 31, 1946, and are further subject to the provision that upon arrival in Switzerland and prior to engaging in any activities in that country, the persons licensed herein will present this license together with a copy of your application of May 31, 1946, for inspection by the United States Legation at Bern.

This license does not authorize the acquisition of any alleged rights, or of any option with respect to any alleged rights claimed by I. G. Chemie in the shares or any other property of General Aniline and Film Corporation vested by the Alien Property Custodian; nor does this license constitute a recognition of the existence of any rights by I. G. Chemie in any of the shares or other property of General Aniline and Film Corporation.

It should be noted that, as in the case of all similar licenses, nothing contained herein may be regarded as being beyond a bare authorization. No endorsement of the licensed activity may be implied.

Sincerely yours,

ORVIS A. SCHMIDT,
Director.

Remington Rand Inc.,
1 Atlantic Street,
Stamford, Connecticut.

2694 Filed Jul 20 1950

Intervenor's Exhibit No. 2.

TREASURY DEPARTMENT, WASHINGTON

Foreign Funds Control
In reply please refer to: 96273 Jun 14 1946

DEAR SIRS:

Reference is made to the license which was issued to you on this date, authorizing conferences and negotiations in Switzerland with officers and stockholders of I. G. Chemie in connection with shares of General Aniline and Film Corporation vested by the Alien Property Custodian.

If, as a result of your negotiations and conferences, you feel that it is desirable to take further action with respect to the shares under discussion, you should consult with the United States Legation, Bern.

Sincerely yours,

ORVIS A. SCHMIDT,
Director.

Remington Rand Inc.
1 Atlantic Street
Stamford, Connecticut

2695 Filed Jul 20 1950

Intervenor's Exhibit No. 3.

TREASURY DEPARTMENT, WASHINGTON

Foreign Funds Control
In reply please refer to: 100699 Dec 23, 1946

Dear Mr. Truitt:

Reference is made to your letter of October 14, 1946, addressed to the Secretary of the Treasury, and to the application filed on behalf of Remington Rand, Inc., on the same date, requesting that a Treasury license be issued author-

izing the acquisition by Remington Rand, Inc., of an option covering whatever interest I. G. Chemie may have in certain shares of General Aniline & Film stock vested by the Alien Property Custodian.

As you know, the above application has been the subject of consideration by the various interested departments. As a result of recent interdepartmental consultation it now appears, in view of the provisions of General Ruling No. 19 under which property vested by the Alien Property Custodian is no longer regarded as blocked property for purposes of Treasury control, that the transaction described in the subject application requires no Treasury license in view of the recent inclusion of Switzerland in General License No. 94. The applicable provisions which apply to a case involving a Swiss corporation which is also a national of Germany and which does not involve blocked property in the United States are Paragraph 3 of General License No. 94 in conjunction with Paragraph 3 of General License No. 53. In view of the foregoing your application appears to require no further action by this Department.

In this connection, your attention is directed to the provisions of the Assignment of Claims Act 31 U. S. C., Section 203. It should be understood that nothing in this letter constitutes any expression of approval of the transaction desired to be effected by you nor any recognition of the existence of any rights of I. G. Chemie in any shares or other property of General Aniline & Film, nor any waiver of the Assignment of Claims Act.

Sincerely yours,

JOHN S. RICHARDS,
Acting Director.

Mr. Max O'Rell Truitt
Cummings & Stanley
1616 K Street, N. W.
Washington 6, D. C.

• • • • • • • • • •

2701 Filed Jul 20 1950

Intervenor's Exhibit No. 5A.

TRANSLATION.

Dr. Walter S. Schiess
Dr. Hans Peter Schmid
Dr. A. Ruggiero-Maire
Lawyers and notaries

Freiestrasse 111
BASLE

Telephone: 2 46 60
Post cheque account: V 137

Basle, 23rd July, 1946.

Dr. Hans Sturzenegger,
St. Jakobstrasse 46,
Basle.

Dear Dr. Sturzenegger,

I am sending you enclosed the "Recapitulation of the declaration made to Mr. Richner" as we drew it up this morning, and remain

Yours truly,

/s/ Dr. Walter S. Schiess.

1 Enclosure indicated.

2708 Filed Jul 20, 1950

Intervenor's Exhibit No. 8.

INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.,

Société Internationale pour Participations Industrielles et Commerciales S. A.

Basel 2 (Postfach), den March 20, 1947.
Peter Merianstr. 19

Telegramme: Interhandel
Telephone: 2 63 80, 4 79 90

Giro-Konto: Schweiz. Nationalbank
Postcheck-Konto: V 11 682

Mr. Bill Shorten,
Vice-President Remington Rand, Inc.,
Hotel Trois Rois,
Basle.

Dear Sir,

We beg to refer to our letter dated March 17th addressed to Mr. Fritz Richner, General Manager, Union Bank of Switzerland, Zürich, regarding our negotiations with Remington Rand Inc.

Complying with the desire expressed by you yesterday we gladly confirm:

1) that the option, of which we were speaking, would be in written form;
2) that the Gentlemen's Agreement has among others the meaning
   a) that we will not discuss the price we mutually agreed upon;
   b) that we will not take any initiative to start negotiations with other private interested parties (on the other hand it seems to be obvious that we must be free to receive proposals by third parties).

We hope that this supplementary statement meets with your wishes and beg to remain, dear Sir,

Yours truly,

INTERNATIONALE INDUSTRIE-
& HANDELSBETEILIGUNGEN A. G.

ISELIN GERMANN

2709 Filed Jul 20 1950

Intervenor's Exhibit No. 9.

INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.

Société Internationale pour Participations Industrielles et Commerciales S. A.

Basel 2 (Postfach), den April 21, 1947.
Peter Merianstr. 19

Telegramme: Interhandel
Telephon: 4 79 90, 2 63 80

Giro-Konto: Schweiz. Nationalbank
Postcheck-Konto: V 11 682

Remington Rand Inc.,
Stamford, Connect., U.S.A.

Attention of Mr. Bill Shorten, Hotel Trois Rois, Basel.

Dear Sirs,

We beg to inform you that we have given again your demand for an option agreement the most serious consideration. However we have to state that we are still not convinced that the procedure proposed by you is the best and the only way to protect our interests. We think also that it is absolutely necessary for us, in view of our responsibility towards our shareholders, to continue our own discussions with the U. S. Department of Justice, before any private agreements can be accepted by us. As we are feeling furthermore that the U. S. Government is not agree-

able, for the present, to any priority of any private American party we deem it necessary to cancel the Gentlemen's Agreement existing between us, by giving the 15 days' notice, the agreement therefore being ended on May 6th. But we beg to emphasize our readiness to continue our negotiations if it suits you too and to try to find a mutually satisfactory solution for our problems.

Yours truly,

INTERNATIONALE INDUSTRIE-
& HANDELSBETEILIGUNGEN A. G.
ISELIN GERMANN

11.59 PM—May 6, 1947
23.59 May 6, 1947

2710 Filed Jul 20 1950

Intervenor's Exhibit No. 10.

URGENT & EXPEDITE

Rush office May 5, 1947

Sent W W R C A
Shorten sent R C A

INTERHANDEL
BASEL, SWITZERLAND

REFERENCE IS NOW MADE TO THE AGREEMENT, PARTLY WRITTEN AND PARTLY ORAL AS SUPPLEMENTED, AMENDED, MODIFIED AND EXTENDED FROM TIME TO TIME FOR THE PURCHASE OF ALL YOUR SHARES OF GAF STOCK OF BOTH CLASSES, WHICH YOU CANCELLED EFFECTIVE MAY 6, 1947 BY YOUR LETTER TO REMINGTON RAND OF APRIL 22 LAST. THE AGREEMENT AFORESAID AS SUPPLEMENTED AMENDED AND MODIFIED IN HEREINAFTER REFERRED TO AS "THE AGREEMENT."

THE UNDERSIGNED IS A GROUP REPRESENTED BY UNION BANK OF SWITZERLAND AND THE ASSIGNEE OF REMINGTON RAND INC. THE UNDERSIGNED DOES HEREBY MAKE AN OFFER TO PURCHASE FROM YOU ALL THE SHARES OF GAF OF BOTH CLASSES OWNED BY YOU ON APRIL 24, 1942 AT THE AGREED PURCHASE PRICE THEREFOR. OUR ELECTION TO PURCHASE ALL OF SUCH SHARES

AS HEREIN PROVIDED SHALL BE DEEMED TO BE AND SHALL CONSTITUTE AN ACCEPTANCE BY US OF YOUR AGREEMENT TO ACCEPT AN OFFER FOR THE SALE OF THE GAF SHARES AFORESAID. WE WILL PAY YOU THEREFOR THE AGREED PURCHASE PRICE AGAINST DELIVERY TO US WITHIN A REASONABLE TIME, OF VALID STOCK CERTIFICATES, IN GOOD DELIVERY FORM, EVIDENCING THE GOOD AND LAWFUL TRANSFER OF ALL SUCH SHARES TO US. THE NECESSARY LICENSES AND CONSENTS OF THE COMPETENT U. S. AUTHORITIES TO MAKE THIS OFFER HAVE ALREADY BEEN OBTAINED.

WE REGRET THE NECESSITY OF DIRECTING TO YOUR ATTENTION THE VIOLATION OF YOUR OBLIGATIONS IN THE TWO FOLLOWING IMPORTANT ASPECTS: FIRSTLY, YOUR REPRESENTATIVE IS NOT COOPERATING INTENSIVELY WITH REMINGTON RAND AS YOU EXPRESSLY AGREED, AND SECONDLY, UPON YOUR INITIATION
2710a YOU ARE NEGOTIATING WITH OTHERS FOR THE SALE OF THE GAF SHARES AFORESAID CONTRARY TO YOUR SOLEMN OBLIGATION.

IF YOU SO DESIRE WE ARE PREPARED TO EXPRESS IN WRITING ALL THE NECESSARY AND INCIDENTAL MATTERS NECESSARILY CONNECTED WITH THE CONSUMMATION OF THIS ENTIRE MATTER AND WE REQUEST THAT AS YOU HAVE AGREED YOU IMMEDIATELY SEND TO THE UNITED STATES A DULY AUTHORIZED DELEGATION OF YOUR COMPANY TO ACT FOR YOU IN ORDER TO DETERMINE ALL SUCH DETAILS.

ASSURING YOU OF OUR DESIRE TO COOPERATE FULLY WITH YOU IN ALL RESPECTS AS CONTEMPLATED BY THE SPIRIT AND LETTER OF THE AGREEMENT WE AWAIT YOUR PROMPT ADVICES OF THE EARLY ARRIVAL HERE OF YOUR DULY AUTHORIZED DELEGATES FOR THE PURPOSE AFORESAID.

AMERICAN ANILINE & CHEMICAL COMPANY INC

BY C. PROCTOR BRADY
PRESIDENT

2711 I, the undersigned Notary Public at Basel (Switzerland) do hereby certify that this is a true photostatic copy of the original* (*copy) of the cable. Basel, the 19 (nineteenth) day of July 1949 (nineteen hundred and forty nine).

(Signature Illegible)
Notary.

2712 Filed Jul. 20, 1950

Intervenor's Exhibit No. 11.

AMERICAN ANALINE AND CHEMICAL CO., INC.
1 Atlantic St. Stamford, Conn.

Internationale Industrie & Handelsbeteiligungen AG
Basel 2 Switzerland

Dear Sirs:

I hereby confirm cable this day sent to you reading as follows:

"Reference is now made to the agreement partly written and partly oral as supplemented, amended, modified and extended from time to time for the purchase of all your shares of GAF stock of both classes which you cancelled effective May 6, 1947 by your letter to Remington Rand of April 22 last. The agreement aforesaid as supplemented, amended and modified is hereinafter referred to as "The Agreement." The undersigned is a group represented by Union Bank of Switzerland and the assignee of Remington Rand Inc. The undersigned does hereby make an offer to purchase from you all the shares of GAF of both classes owned by you on April 24, 1942 at the agreed purchase price therefor. Our election to purchase all of such shares as herein provided shall be deemed to be and shall constitute an acceptance by us of your agreement to accept an offer for the sale of the GAF shares aforesaid. We will pay you therefor the agreed purchase price against delivery to us within a reasonable time of valid stock certificates in good delivery form evidencing the good and lawful transfer of all such shares to

us the necessary licenses and consents of the competent U. S. Authorities to make this offer have already been obtained. We regret the necessity of directing to your attention the violation of your obligations in the two following important aspects: firstly your representative is not cooperating intensively with Remington Rand as you expressly agreed and secondly upon your initiation you are negotiating with others for the sale of the GAF shares aforesaid contrary to your solemn obligation. If you so desire
2713 we are prepared to express in writing all the necessary and incidental matters necessarily connected with the consummation of this entire matter and we request that as you have agreed you immediately send to U. S. A. duly authorized delegation of your company to act for you in order to determine all such details. Assuring you of our desire to cooperate fully with you in all respects as contemplated by the spirit and letter of the agreement we await your prompt advices of the early arrival here of your duly authorized delegates for the purpose aforesaid. American Aniline and Chemical Co. Inc. by C. Proctor Brady, President."

Kindly acknowledge receipt of this letter by signing and returning a carbon copy thereof herewith enclosed.

Very truly yours,

AMERICAN ANILINE AND CHEMICAL CO. INC.
WM. E. SHORTEN,
Vice President

2714 Filed Jul. 20, 1950

Intervenor's Exhibit No. 12.

INTERNATIONALE INDUSTRIE & HANDELSBETEILIGUNGEN A. G.

Société Internationale pour Participations Industrielles et Commerciales S. A.

Telegramme: Interhandel
Telephon: 4 79 90, 2 63 80

Giro-Konto: Schweiz, Nationalbank
Postcheck-Konto: V 11 682

Basel 2 (Postfach) den
May 7, 1947.
Peter Merianstr, 19

American Aniline and Chemical Co. Inc.,
New York.

Attention of Mr. Bill Shorten, Hotel Trois Rois, Basel.

Dear Sirs,

We hereby acknowledge receipt yesterday of cable and letter, copies attached.

This is without prejudice and does not constitute more than a mere acknowledge of receipt.

Our omission to act at the moment, or to comment in this acknowledgment, in respect of the contents and subject matter of your cable and letter, cannot be construed as an acquiescence in any phase of said contents or in your action regarding the subject matter thereof. All reservations are made by us in respect thereof.

Yours truly,

INTERNATIONALE INDUSTRIE-
& HANDELSBETEILIGUNGEN A. G.
F. ISELIN
H. STURZENEGGER

2715 Filed Jul. 20, 1950

Intervenor's Exhibit No. 13.

DR FELIX ISELIN PRESIDENT
INTERHANDEL
BASEL SWITZERLAND

MR. PRESIDENT: REMINGTON RAND INC HAS ASSIGNED TO AMERICAN ANILINE & CHEMICAL COMPANY, INC. ALL ITS RIGHT TITLE AND INTEREST IN AND TO THE AGREEMENT BETWEEN US FOR THE PURCHASE OF ALL YOUR COMPANYS GAF SHARES WHICH YOUR COMPANY RECENTLY NOTIFIED US YOU WERE CANCELING AS OF MAY 6TH. AMERICAN ANILINE IS ASKING THAT AN AUTHORIZED DELEGATION OF YOUR CORPORATION COME TO THIS COUNTRY FOR THE PURPOSE OF CONCLUDING ALL THE DETAILS CONNECTED WITH THE GAF TRANSACTION. MAY I THEREFORE INVITE YOU AND DR. STURZENEGGER TO BE OUR GUESTS WHILE YOU ARE IN THIS COUNTRY. LOOKING FORWARD WITH PLEASURE TO MEETING YOU BOTH.

JAMES H. RAND, JR. PRESIDENT
REMINGTON RAND INC.

* * * * * * * * * *

2717 Filed Jul. 20, 1950

Intervenor's Exhibit No. 15.

KNOW ALL MEN BY THESE PRESENTS: THAT, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations paid by Remington Rand Inc., a Delaware Corporation, to American Aniline & Chemical Company, Inc., a Nevada Corporation, the receipt whereof is hereby duly acknowledged, American Aniline & Chemical Company, Inc. hereby sells, assigns, transfers, delivers and sets over unto Remington Rand Inc., its successors and assigns, to its and their own proper use, behoof and benefit, all its right title and interest of every nature and character whatsoever in and to (1) an option agreement, partly written and partly oral, between Internationale Industrie und Handelzbeteiligungen A.G., a Swiss Corporation, and Rem-

ington Rand Inc., in relation to the right and option to purchase from Internationale Industrie und Handelzbeteiligungen A.G., 445,624 shares of the Common A Stock and 2,050,000 shares of the Common B Stock of General Aniline & Film Corporation, a Delaware Corporation, and, (2) in and to all of its rights arising out of the exercise by it of the option agreement to purchase the aforesaid shares of stock of both classes of General Aniline & Film Corporation from Internationale Industrie und Handelzbeteiligungen A.G. pursuant to the terms of the option agreement, a copy of the notice, dated May 5, 1947, whereby the option agreement aforesaid was exercised by American Aniline & Chemical Company, Inc., is annexed hereto and made a part hereof.

This assignment is made, executed and delivered without any representation, or warranty of any character or nature whatsoever being made to Remington Rand Inc. by American Aniline & Chemical Company, Inc., it being the essence of this agreement that there shall be no recourse of any character or nature for any reason whatsoever against American Aniline & Chemical Company, Inc. arising out of or connected with this assignment.

2718 American Aniline & Chemical Company, Inc. does hereby give Remington Rand Inc., its successors and assigns, full power and lawful authority, for its or their own use or benefit, but at its or their own cost, to ask, demand, collect, receive, compound, and give acquittances for the same, or any part thereof, and in our name or otherwise to prosecute or withdraw any suits or proceedings at law or in equity in respect of the subject matter of this assignment and the rights hereby transferred and assigned, or intended so to be.

American Aniline & Chemical Company, Inc. hereby further covenants and agrees that it will, wherever and as often as may be requested by Remington Rand Inc. execute and deliver to Remington Rand Inc. such other and further proper and appropriate documents, instruments or other papers as hereafter may be deemed necessary or required to more fully effectuate and carry out the transfer and as-

signment hereby made, or intended so to be, but, always, at the cost and expense of Remington Rand Inc.

In Witness Whereof, American Aniline & Chemical Company, Inc., has hereunto subscribed its corporate name and caused its Corporate Seal to be hereunto affixed by its officers thereunto duly authorized, on this fifth day of May, 1949.

American Aniline & Chemical Company, Inc.

By S. Proctor Brady,
President.

Attest:

.....
Secretary.

2719 State of New York }
County of New York } ss

On the fifth day of May, in the year one thousand nine hundred and forty nine, before me personally came S. Proctor Brady, to me known, who, being duly sworn, did depose and say that he is President of American Aniline & Chemical Company, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Lyda L. Barner,
Notary Public.

Lyda L. Barner, Notary Public, State of N. Y.
Residing in N. Y. County.
Clerk's No. 488, Reg. No. 81352.
Commission Expires March 30, 1950. (Seal)

2774 Filed Jul 20 1950

Intervenor's Exhibit No. 17AA.

TRANSLATION

Minutes of the 95th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 16th and 18th May, 1946, on the business premises of the company.

Messrs. Dr. Felix Iselin, Direktor August Germann and Dr. Hans Sturzenegger are present. Co-opted: Mr. Walter Germann. Excused because of illness: Mr. Charles Thormann.

1. The minutes of the meeting of 16th March, 1946, are read and passed.

2. The board of directors continues its discussion concerning making contact with private interested parties in the U.S.A. regarding a solution of the problems in connection with the participation in the G.A.F. In this connection the repeated contacts with Generaldirektor Richner of the Union Bank of Switzerland have particularly gained in significance as he stated at that time that he was in touch with the American firm Remington Rand Inc. The first contact already took place in the first days of February, 1946. However, as it appeared from the conversations at that time that the American interest was directed exclusively to a penetration in Basle for the purpose of making possible the sale of the participation in the GAF and for the purpose of the subsequent liquidation of our company, a negative reply was given to this first sounding of the said interested parties, whereby however, our readiness/willingness was simultaneously announced to discuss other solutions which would be more tenable for Basle. Such a solution was chiefly seen in that both in the GAF and in Interhandel a situation would be created by Swiss/American distribution of shares which on one side would take into account in the

2775 broadest sense the national industrial interests of the U.S.A. with regard to the GAF and on the other side would fulfill the wishes of the U.S.A. in respect of avoiding undesirable groupings of shareholders in Interhandel, both now and in the future. However, the discussion gave the unambiguous result that the interested parties specially concerned did not desire to give up the cooperation. On the other hand a basis of discussion could be created through our proposal to consider the eventual sale of our participation in the GAF. However, the consultations in this respect led to the recognition that the difference between the ideas of price which we considered on the strength of the internal value of the GAF participation and that of the American interested parties, was very large. Luckily the opposing positions were able to be brought nearer in that it was provided that in transferring the purchase price a packet of Interhandel shares lodged with the GAF would be delivered as well as a cash sum to be paid in Basle in free currency. After tedious discussions regarding the modalities of such a solution the American group requested that we should notify our readiness/willingness to sell in the sense of a binding offer of sale for a limited period of time, taking as a basis the common fundamental basis of discussion.

The board of directors examines the state of affairs of that time on the basis of the retrospect reproduced above of the discussions carried on up to now. After thorough discussion it is unanimously convinced that in the existing circumstances it would be indefensible not to hold out a hand to a compromise solution even if this involved the surrender by selling of the company's main participation.

Before the board of directors takes up the discussion over the concrete material proposals for a solution, it adjourns until Saturday 18th May, 1946, in order to enable its members to re-examine the fundamental and calculative effects of the proposition.

• • • • • • • • • •

2776 The meeting is resumed on 18th May, 1946. Messrs. Dr. Felix Iselin, Direktor August Germann and Dr. Hans Sturzenegger are present. Co-opted: Mr. Walter Germann. Excused because of illness: Mr. Charles Thormann.

The board of directors takes up the discussion of the material possibilities of solution. First of all its recognizes that it would not be advisable to bind oneself definitely by an offer of sale with fixed period of limitation as, on one hand, this could disturb other negotiations and, on the other hand, the question of price would be severely prejudiced from the outset in case of discussions with other interested parties.

On the other hand it is resolved to announce our readiness/willingness to sell the whole participation in the GAF to an American group which is interested.

The following conditions are to be designated for this:

a) Cancellation of the discrimination against Interhandel, its directors, important shareholders and their directors, as well as the other companies which were placed on the black list as a consequence of their relations to the Interhandel complex.

b) Release of all blocked properties of the above-mentioned persons and companies, especially of the bank balances and dividend sums due to Interhandel on the strength of its GAF participation.

The price would have to amount to: $35,000,000.— and would have to be paid as follows:

Delivery of 60,000 Interhandel shares (Fully paid up, at $90.—)	=	$ 5,400,000.—
30,000 Interhandel shares (50% paid up, at $50.—)	=	$ 1,500,000.—
	=	$ 6,900,000.—
+ cash sum	=	$28,100,000.—
		$35,000,000.—

2775-A The payment of the purchase price and delivery of the shares would have to take place in Basle without any further deduction.

It is to be explicitly established that this solution proposal is made without prejudice to our legal standpoint.

Messrs. Dr. Hans Sturzenegger and Walter German are instructed to transmit the above proposals to Generaldirektor Richner in the sense that we would be prepared to accept a licensed offer of purchase by the American interested parties equipped with the above conditions, provided that it is made before 30th June, 1946, with absolute legal validity.

Intervenor's Exhibit No. 17BB.

Excerpt from Minutes of the 96th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on July 4, 1946, on the business premises of the company.

2777 4. The board of directors submits the further development of the negotiations with the representatives of the firm Remington Rand Inc. to a thorough discussion. The solution proposal settled on our side at the board meeting of 16th/18th May, 1946, underwent certain modifications in the subsequent negotiations which were continually discussed and considered with the individual members of the board of directors. As result of the numerous contacts with the interested group, a counter-proposal was finally made through Generaldirektor Richner of the Union Bank of Switzerland, which, while retaining all assumptions and execution conditions of the readiness/willingness announced by us to accept an offer, contained materially the following conditions: the price would amount to $25,000,000.—, converted into Swiss francs at the official rate of exchange of the day, plus delivery of 52,000 fully paid Interhandel shares and 28,000 50% paid up Interhandel shares. Moreover, the release of the blocked bank balances and dividends no longer received from the years 1940/41 would be obtained. On the other hand this solution pro-

posal includes a renunciation by Interhandel of the dividends since 1944.

Although the counter-proposal means a not inconsiderable sacrifice compared with our proposition, the view had prevailed among the members of the board of directors from the repeated contacts that it is more correct to make a further concession in the interests of making possible an economic agreement with the group of private interest parties from the U. S. A. In this sense, after previous
2778 agreement of all members of the board of directors, Generaldirektor Richner was informed that we could declare ourselves in agreement with the price proposed by him. This modification of the declaration of readiness/willingness is put up for unanimous resolution in due form.

2779 **Intervenor's Exhibit No. 17CC.**

TRANSLATION

Excerpt from the Minutes of the 97th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 20th July, 1946, on the business premises of the company.

.....

2. In the continuation of the negotiations it has been represented by the firm Remington Rand Inc. that a great facilitation in achieving the official approval for the cession of the GAF participation would be created if the parties interested in the purchase were at the same time granted an option of the preferred share capital of our company. To guarantee the financial interests of the Swiss common shareholders it would be provided that they were given the possibility by formation of a tender, to sell their holdings of Interhandel shares and to receive the counter-value paid out in Switzerland without encumbrances by a large Swiss bank. Moreover, the firm Remington Rand Inc. expresses the urgent desire that a power of attorney be given to it

by our company for the purpose of conducting the necessary negotiations with the American authorities so that it could refer to the fact, in respect of the steps it would take, that it is also representing Basle's interests, where it now has a decisive participation.

The board of directors subjects the proposals to a thorough examination. It is fully aware that considered from the purely financial point of view the way proposed could be suitable for finding a certain interest. On the other hand there is no doubt that this proposal would mean
the surrender of the Swiss character of the Basle
2780 company which should only then be considered when
all other possibilities have been exhausted. In the unanimous opinion of the board of directors, however, this situation has not yet come about so that in agreement with the preferred shareholders of the company it is resolved that the proposal of the firm Remington Rand Inc. with regard to the cession of the decisive position in Basle, is to be refused. Neither does the board of directors find itself prepared to give the firm Remington Rand Inc. a power of attorney as such a step seems irreconcilable with fundamental consideration of security. The negative attitude of the board of directors to the above-mentioned proposals should also be considered correct in view of the co-operation of the Swiss authorities in the clarification of our case, as the official organs would not desire a fundamental change of the overall situation shortly before the arrival of an American delegation to deal with our matter.

.....

Intervenor's Exhibit No. 17DD.

2781 Translation RG/eh
2/3/50
Translator's remarks in parenthesis: (...)

Circular Resolution of the Board of Directors of

INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G., BASEL

It is resolved that the statement of readiness/willingness given to Mr. Richner, General Manager of the Union Bank of Switzerland, addressed to the firm of Remington Rand Inc., and concerning the alienation of the total participation in GAF is to be renewed and/or prolongated undissolvably until September 30, 1946 with the possibility to withdraw it from then on at any time by observing a fourteen-day period of notice.

At the same time the assurance shall be given that also until September 30, 1946 no new parties interested are looked for by us.

As to the presentation of Remington Rand's Inc.'s bid it shall however be obtained that the offer be accompanied by a guaranty of fulfillment given by one of the big Swiss banks in form of surety.

Basle, July 25, 1946	Dr. Felix Iselin
	H. Sturzenegger
Brugg, July 26, 1946	A. Keller
Lenzerheide, July 26, 1946	A. Germann
Caux, July 29, 1946	Charles Rudolph

2782 **Intervenor's Exhibit No. 17EE**

TRANSLATION

Excerpt from the Minutes of the 99th meeting of the board of directors of the

INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G., held on 19th September, 1946, on the business premises of the company.

.....

2. Dr. Sturzenegger reports on the development of the negotiations with the representatives of Remington Rand Inc. Generaldirektor Richner of the Union Bank of Switzerland approached us again a short time ago in order to obtain a prolongation of the period of readiness/willingness which can be terminated at any time from 30th September, 1946, under observation of a period of notice of fourteen days. The board of directors understands in principle the desire of the partner to the negotiations. However, it believes that a prolongation in the proposed sense, namely until the end of the year, would mean too long a tie. Before resolving on a step in this direction, the arrival of Mr. Wilson from Washington is to be awaited.

.....

2783 **Intervenor's Exhibit No. 17FF.**

TRANSLATION

Excerpt from the Minutes of the 100th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 3rd October, 1946, on the business premises of the company.

.....

4. Mr. Wilson reports on his various contacts with the representatives of Remington Rand Inc., especially with Mr. Rand himself, as well as with Mr. Desvernine and Mr.

Shorten. Unfortunately it appears that he was insufficiently informed regarding the development of our negotiations with the group in the decisive phases. Asked his opinion regarding the chances of success of the efforts of the Remington group with the American authorities, Mr. Wilson expresses himself rather sceptically.

A resolution regarding the questions under discussion is postposed with the intention that Mr. Wilson's stay in Switzerland is to be utilized for the intensive clarification of all problems and to make contacts with the Swiss authorities and the representative of Remington. The board of directors will meet again before the departure of Mr. Wilson in order to form the necessary resolutions then on the basis of the mutually clarified position.

.....

2784 **Intervenor's Exhibit No. 17GG.**

TRANSLATION

Excerpt from the Minutes of the 101st meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 15th October, 1946, on the business premises of the company.

.....

2. The question of a definite prolongation of our declaration of readiness/willingness regarding the sale of the participation in the GAF was repeatedly brought up by the representatives of the Remington Rand Inc., with whom thorough discussions were held on two occasions during Mr. Wilson's visit. The board of directors represents the point of view that the settlement, at present valid according to which our declaration of readiness/willingness tacitly continues in force and can only be retracted under observation of a period of notice of 14 days, represents a solution which serves both parties very well. On our side there is no inducement to make use of stipulated right of

retraction. On the other hand a tie that would be stronger with regard to time should be avoided as the partner to the negotiations can not offer us greater securities for his part by concrete proof of the success of his efforts with the American authorities.

3. The proposition also made by the representatives of the Remington Rand Inc. that Mr. Wilson might be given a joint power of attorney together with a legal representative of the Remington group so that the two representatives could together deal with our matter with the American authorities in the sense of the Remington proposal, is subjected to thorough examination. However, the opinion prevails that such a joint power of attorney would represent a very strong tie to the Remington group which could not be justifiable as long as our partner in the negotia-
2785 tions cannot prove any more concrete progress with the American authorities. As Mr. Wilson does not consider the giving of a joint power of attorney to be expedient either, the board of directors resolves not to comply with the wish of the Remington group.

. . . . . .

2786 **Intervenor's Exhibit No. 17HH.**

Excerpt from the Minutes of the 102nd meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 4th December, 1946, on the business premises of the company.

. . . . . .

2. In the last few days the representatives of Remington Rand Inc. have again made contact with us after the joint consultations had for a long time been at a standstill since the departure of Mr. Wilson. Mr. Nemzek informed us that Remington has now achieved concrete progress in its continued efforts in that first of all it had succeeded in creating a benevolent atmosphere in the American Department of

Justice. The granting of a license by the Treasury Department for the conclusion of a private agreement between Remington and Interhandel is imminent. However, it is necessary that Interhandel should somehow express to Remington its desire to negotiate.

The wish of the representatives of Remington Rand Inc. is that Interhandel should confirm the following points in writing:

a) that Interhandel still opposes a public sale of its GAF participation;

b) that Interhandel is prepared to grant Remington an option on the GAF participation in the sense of the so-called 25 million $ proposition (see minutes of 4th July, 1946, figure 4);

c) that Interhandel implicitly recognizes Remington as strongest shareholder within its corporation;

d) that the preferred shareholders of Interhandel declare themselves prepared to negotiate with regard to an option on the preferred shares of Interhandel in
2787 favour of Remington in connection with a tender for the common shareholders.

In a thorough discussion the board of directors considers the wishes put forward by the Remington representatives. In themselves the wishes of the Remington group are comprehensible seen from the point of view of parties interested in the purchase. Neither is the board of directors blind to the necessity that on our side the means should be placed as far as possible in the hands of the American partner to the negotiations to support and facilitate his efforts with the American authorities. However, the opinion prevails here that our readiness to support the efforts of our partner in the negotiations must not lead to material positions being surrendered prematurely and onesidedly. The board of directors is strengthened in this point of view by the opinions expressed by Mr. Wilson, with whom intensive contact has been possible in the last few days by telegraph and telephone. Mr. Wilson was inclined to judge the prog-

ress of Remington Rand sceptically in his report and on the strength of his contact with the representatives of Remington in Washington and New York did not paint the necessity of complying with the wishes put forward to us by Remington as so urgent that we must decide on important preliminary action.

Therefore the board of directors approves the following letter to Mr. Leo Nemzek, prepared with the date of 2nd December, 1946, and resolves on its dispatch to the addressee:

"We refer to the negotiations with you in accordance with Treasury Department, Foreign Funds Control as per license No. 95939 dated June 14th and specially to our conversations of November 29th. We reiterate our position that our company is neither German owned nor controlled. We like to repeat too that we always have been and still are opposed to a public sale of our assets in the General Aniline and Film Corporation, New York. But in order to facilitate a solution which would comply with tendencies towards Americanization for which we always showed full comprehension and in order to avoid litigations if reasonably possible, we would be agreeable to sell to Remington Rand Inc. our interests in the General Aniline and Film Corporation at terms to be negotiated. However under prevailing conditions we are not yet in a position to grant a formal first right of refusal or option."

2788 On the other hand the board of directors is unanimously of the opinion that a written formulation of the 25 million $ proposition in the sense of the granting of an option can still not be considered.

The board of directors also takes note that the opinion was expressed by the preferred shareholders of our company that at the present state it is impossible to negotiate regarding the granting of an option on the preferred shareholders of Interhandel. In the discussion concerning this question the president makes use of the opportunity to

voice the opinion that, circumstances permitting, a solution by means of the cession of the decisive Swiss position in the company will also have to be considered if no other solution promises success and if both the preferred shareholders and the common shareholders were offered a fair price for their Interhandel shares. The board of directors is not blind to these considerations and establishes with satisfaction that in repeated discussions concerning this question in the circle of preferred shareholders, who will have to decide finally regarding this point, there is evidence of great comprehension for solutions in the general financial interests of all shareholders although they do not fail to recognize the important consequences of a cession of the leadership in the company to an interested party like Remington which would introduce the subsequent liquidation of the company. With regard to the practical effects of this considerations it is the unanimous opinion that such a solution which would involve the surrender of the company, should only be considered as ultima ratio when all other possibilities of a compromise solution in the U. S. A. are exhausted. It is also recognized that it would be mistaken negotiating technique to enter into discussions at all as long as the examination of other possibilities is still pending.

It is finally resolved that the wish of Remington Rand Inc. regarding recognition as largest common shareholder is not to be complied with.

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2789 **Intervenor's Exhibit No. 17 II.**

TRANSLATION

Excerpt from the Minutes of the 103rd meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 16th January, 1947, on the business premises of the company.

.....

2. The board of directors hears the report concerning the continuation of the negotiations with the representatives of Remington Rand Inc. Since the prospect has been held out to us at the turn of the year that an offer would be submitted to us in a few days, the draft text of a contract has been submitted to us at a joint meeting in Zürich on 8th January, 1947, which, however, does not contain an offer from Remington but an option agreement in the sense of the well known wishes of the partner to the negotiations. The modification in the procedure was explained by the representatives of Remington in that they could only obtain the necessary approval from the authorities if a binding guarantee of cession is submitted on our side. At the same time as the draft for the option contract regarding the 25 million $ proposition, the draft for a joint power of attorney was also submitted to us, to be granted to Mr. Wilson together with one of Remington's lawyers, Mr. Hackett. However, it is superfluous to take up an attitude to this draft as we were informed by telephone on 15th January, 1947, by Generaldirektor Richner that the idea of the joint power of attorney had been given up and that on the other hand it is desired that Mr. Wilson should be given a simple power of attorney from us. As far as the option agreement in the sense of the 25 million $ proposition is concerned, the board of directors again considers the
2790 situation is a thorough discussion. It is not overlooked that in submitting the concrete propositions

the Remington Rand Inc. has done a lot of work and that it is still the interested party which is taking the most trouble on the American side to bring about a solution. It seems to be obvious and is also confirmed by Mr. Wilson in his reports, that Remington is attempting to create through its contacts a favourable atmosphere for the proposed transaction with all departments which have something to say in our matter. On the other hand the board of directors cannot blind itself to the knowledge that the material results of these efforts are still difficult to estimate and it has not been possible for any representative of our side to establish directly their success. From the information which Mr. Wilson has sent us from Washington the impression which prevails here is confirmed that Remington is first of all attempting to achieve an absolute priority in the negotiations with us, i.e. in its efforts for the acquisition of the GAF. The board of directors is not blind to considerations of fairness which urge the preference of the most active interested party, who at the same time has been in contact with us for the longest time. However, it comes to the conclusion that this comprehensible fairness has already been expressed to a very large extent in the long-standing gentlemen's agreement and that there is no necessity for confirm this by an option contract which would mix up our controversy in the U. S. A. for better or worse with Remington. It therefore resolves unanimously to continue in our refusal to conclude an option agreement with Remington Rand Inc. As chief motification it is to be stated to Remington that the delivery of a binding proposition for a compromise proposal would prejudice our legal standpoint too severely so long as the proposition has not certain prospects of being approved by the authorities.

On the other hand it is to be expressly confirmed to Remington that we are still holding to the existing gentlemen's agreement.

2791 3. A letter was addressed to the president of our company on 4th January, 1947, by the Geneva bank-

ing firm Lombard, Odier & Co. According to this, Mr. Jean Bonne, a partner in the said banking firm, was empowered on the occasion of his recent stay in New York by the members of a group of interested parties which are represented by the banking firm Morgan, to get into touch with us in order to inform us of the interest of this group in a participation in the GAF by co-operation. The board of directors examines the information submitted concerning this possibility which is supplemented by Mr. Walter Germann on the strength of his personal contact with various gentlemen from the firm Lombard, Odier & Co. It is resolved to inform the new interested party of our readiness in principle to open joint discussions with regard to the possibility of a solution by co-operation with American interested parties.

4. Apart from the above-mentioned group of interested parties, various other American firms have come forward recently and announced their interest in the acquisition of the GAF. As such must be mentioned:

The brokerage firm A. G. Becker & Co., New York,
the United States Rubber Corporation,
The American Celanese Corporation and
the Pullman Corporation.

However, as the interest of these several firms has not yet materialized further, the board of directors considers it correct that for the time being no move be made by us to continue the contact with them.

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2792 **Intervenor's Exhibit No. 17JJ.**

Excerpt from the Minutes of the 104th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G., held on 5th February, 1947, on the business premises of the company.

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3. The board of directors hears the report concerning the present state of the negotiations with Remington Rand Inc. and concerning the preparations for the contact with the American group of interested parties represented by Lombard, Odier & Co., or rather Morgan & Co.

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2793 **Intervenor's Exhibit No. 17KK.**

Excerpt from the Minutes of the 107th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 8th March, 1947, on the business premises of the company.

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4. The board of directors dedicates a short discussion to the questions connected with the controversy in the U. S. A. The problem of registration has again been broached recently by the firm Remington Rand Inc. after the question of its entry in the sharebook has repeatedly been examined and postponed. The board of directors is of the opinion that it is not justifiable at the present time, when the development of the controversy with the U. S. A. is not yet cleared up, to approve an increase of voting power of the American factor in our company. In particular it should be inopportune to introduce as shareholder an American group whose first interest is directed to the acquisition of a participation in the General Aniline & Film Corporation,

New York, which belongs to us, for it is obvious that from this double position, as shareholder on one hand and as party interested in the purchase of our main participation on the other, collisions of interests might arise which should be avoided as far as possible. Therefore the representatives of the Remington Rand Inc. are to be urged to desist still longer with their application for registration of the shares acquired by the group in our sharebook, as otherwise the board of directors would be forced to utter a refusal.

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2794 **Intervenor's Exhibit No. 17LL.**

TRANSLATION

Excerpt from the Minutes of the 109th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 17th March, 1947, on the business premises of the company.

.....

2. The negotiations have recently been greatly intensified by the firm Remington Rand Inc. in that two representatives from America, Mr. Shorten and Mr. Garey, have arrived. In the new conversations these gentlemen have stated that Remington must at all events obtain the option on the GAF participation requested by it in order to be able to proceed with its efforts with the American Authorities. Such an option would have to be of long duration. A term up to 31st December, 1947, is mentioned. As justification it is asserted that on the strength of its long and intensive efforts Remington has a claim to receive a far reaching priority. Moreover, it is stated that another form of the agreement is not possible because the American Claims Act, according to which a claim on the American government cannot be transferred, opposes any other form of tie. The demand of Remington is being asserted with all emphasis

since the arrival of the enlarged negotiating delegation, whereby our partner to the negotiations is even threatening the breaking off of the consultations.

The board of directors is well aware of the significance of the decision to be taken, for it has to be decided whether it is possible to hold to the former negotiation policy or whether in view of the danger of a breakdown in the consultations it is more correct to come round, which would practically mean the granting of the option. The dangers which could result from the breakdown of the negotiations are chiefly that in future the support of Remington in representing our interests in the U. S. A. would disappear and that we would eventually have to reckon with an even hostile attitude of the disappointed partner to the negotiations.

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In spite of this hesitation the board of directors cannot overlook the fact that a long-term one-sided tie of our company in respect of the fate of its main participation is difficult to justify without concrete clues being available that the way proposed would lead to success. In this respect the renewed conversations with Remington have not had any decisive result. Apart from that it must be considered that our legal representative in Washington, Mr. Wilson, expresses himself very critically with regard to Remington's chances of success and explicitly advises us against an option. Mr. Wilson refers to the fact that according to his judgment direct negotiation with the Department of Justice should rather promise success and that a previous tie with Remington would necessarily bring with it the prejudicing of these chances.

In view of the severe consequences which the resolution to be formed would have for the future of the controversy with the U. S. A., the board of directors is of the opinion that a final decision can only be taken after the planned information trip of Mr. Walter Germann to the U. S. A., as there is still the need to be informed even more thoroughly and more reliably with regard to the present state of our affair. Unfortunately there is opposition between the Rem-

ington representatives and ourselves in this question too, in that the former wish to bring the negotiations to a positive conclusion without further waste of time. However, the board of directors is of the opinion that it cannot comply with the desire of Remington's which could only be justified from insignificant motives of saving time.

It is therefore unanimously resolved to send the following letter to Generaldirektor Fritz Richner from the Swiss Bank Corporation, for delivery to the representatives of Remington Rand Inc.:

2796 "We refer to the consultations which took place in Zürich on 14th inst. with you and the other representatives of the Remington Rand Inc.

At its today's meeting our administration has again very thoroughly considered the question of the immediate granting of an option in the sense proposed by you. Unfortunately it has reached the opinion that nothing decisive has changed in the fundamental state of affairs since it was already examined in January of this year. Therefore our administration is of the opinion that in all events the clarifications which we consider necessary will be undertaken before a new decision can be given in the matter. Moreover, it will be considered necessary to carry out without delay the plan to send a representative to the U. S. A. In this connection we have examined the possibility that the trip can be organized that in the course of the next few weeks it will be possible to resume negotiations in Switzerland. This seems to be impossible from practical reasons not depending from us. Therefore we repeat the suggestion already made verbally that the American representatives of Remington return for their part to the U. S. A. where the negotiations could also be continued. We consider it of value here to announce our readiness/willingness that our representative in the U. S. A. undertakes intensively with you the necessary clarifications and that, if necessary, we will immediately appoint a delegation in the U. S. A. equipped with the necessary powers to act.

It is of importance to us to take this opportunity to confirm explicitly to you our loyalty to the Remington group. In this sense we declare

1) that we are prepared to prolong definitely the gentlemen's agreement in existence between us so that it can only be terminated from 15th April, 1947, again with a period of notice of 14 days.

2797 2) that the granting of an option of longer duration to Remington Rand Inc. is contemplated in the case that the facts established in the U. S. A. convince our administration that the way proposed by you is the best one.

With regard to the question of registration of shares in the name of Remington Rand Inc. in our sharebook, we request you to postpone still further the relating application for the time being, in the sense of our verbal conversations.

We remain, dear Sir,"

sig. Dr. Felix Iselin
A. Germann
H. Sturzenegger
F. v. Tscharner
A. Keller
Charles Rudolph

2798 **Intervenor's Exhibit No. 17MM.**

TRANSLATION

Excerpt from the Minutes of the 110th meeting of the board of directors of the Internationale Industrie- & Handelsbeteiligungen A.-G., held on 15th April, 1947, on the business premises of the company.

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The board of directors hears a report lasting three hours from Mr. Walter Germann regarding his trip to the U. S. A., particularly concerning the co-operation with the lawyers Mr. Wilson and Mr. Whiteford regarding the repeated con-

sultations with the Attorney General of the U. S. A., Mr. Tom Clark, and with the director of the Office of Alien Property, Mr. Donald Cook, and regarding the contact with the Remington Rand Inc. gentlemen. Moreover, it takes note of the proposal submitted by the firm A. G. Becker & Co. Inc., New York, in its letter of 3rd April, 1947.

Although the urgency of a fresh judgment of the overall situation and of the resolutions to be formed is generally recognized, the board of directors refrains from forming any resolutions at today's meeting. It is preferable to await the return of Dr. Felix Iselin so that the full complement of the board of directors can then form an attitude to the important questions.

2799 **Intervenor's Exhibit No. 17NN.**

TRANSLATION

Excerpt from the Minutes of the 111st meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 21st. April, 1947, on the business premises of the company.

.....

The board of directors examines the situation in U. S. A. in a thorough discussion as it presents itself today according to the facts established directly and on the spot. As far as the relationship with Remington Rand Inc. is concerned, it is confirmed that this group of interested parties disposes without doubt of certain possibilities of influence in the U. S. A. whose intervention both in a friendly and in a hostile sense should not be underestimated. The group has particularly proved that it has access to important personalities in decisive official and private positions. On the other hand, in all contacts which have taken place jointly with the Remington Rand Inc. gentlemen no single attitude has been adopted by any office or personality from which it could have been gathered that the solution proposed by Remington Rand Inc. had prospects of success in the sense

that its approval by the competent American authorities is to be considered probably or even only conceivable. In this connection the declaration of the first lawyer of Remington Rand Inc., Mr. Homer Cummings, has particularly cleared matters as he believes to be able to establish the following points:

2800 1) that the American government is striving for the Americanization of the GAF;

2) that it would like to do this by means of a public sale;

3) that the American government is striving for an early settlement of the matter;

4) that Remington Rand Inc. is an acceptable party interested in the purchase;

whereby, however, he at the same time openly admitted that Remington Rand Inc. has no guarantee of any sort for the carrying out of its plan. However, the opinion of Mr. Cummings with regard to the chances of success can be recognized from the fact that summing up in his conversations the way proposed by Remington Rand Inc., he could only indicate it as the "gamble" with the most prospects.

The statements of Mr. George Allen, who is working together with Remington Rand Inc. in the GAF matter, are also significant, for this gentleman, in short, expressed himself as follows: "Remington Rand Inc. has at present definitely made the most progress among the parties interested in the GAF in the U. S. A. and therefore should be the most suitable as private partner to a contract. However, it is not possible to give any sort of guarantees or securities with regard to the feasibility of the plan of Remington Rand Inc."

In judging the proposition of Remington Rand Inc., therefore, the board of directors is unanimously of the opinion that the sole demonstration of good contacts without simultaneous production of any clue that the authorities will approve the plan, cannot suffice to justify the granting of a long term option according to the wishes of Remington Rand Inc. up to 31st December, 1947.

As well as these points of view of the most elementary caution in business policy which do not allow the justification of the entry into a long-term one-sided tie in respect of the sale of the GAF participation, much weight is also given to the fact that the granting of an option would disturb the direct negotiations with the American Department of justice commenced a short while ago, when it
2801 would not make them absolutely impossible. In no circumstances can we run this risk for up to today the direct negotiations alone have shown a positive result in that it was possible to establish a readiness to compromise on the part of the American authorities, even if only on untenable conditions up to now.

Therefore, the board of directors comes to the unanimous resolution that the granting of an option to Remington Rand Inc. has to be refused once more. Apart from this the board of directors is also unanimously of the opinion that the gentlemen's agreement which has existed up to now is also no longer tenable as on one hand it still ties our company to a considerable extent while, on the other side, Remington Rand Inc. represents the standpoint that this form of agreement is of no use to it. It is therefore resolved to send out the following letter to Remington Rand Inc., Stamford, Connect., U. S. A., attention of Mr. Bill Shorten, Basle:

"We beg to inform you that we have given again your demand for an option agreement the most serious consideration. However we have to state that we are still not convinced that the procedure proposed by you is the best and the only way to protect our interests. We think also that it is absolutely necessary for us, in view of our responsibility towards our shareholders, to continue our own discussions with the U. S. Department of Justice, before any private agreements can be accepted by us. As we are feeling furthermore that the U. S. Government is not agreeable, for the present, to any priority of any private American party we deem it necessary to cancel the Gentlemen's

Agreement existing between us, by giving the 15 days' notice, the agreement therefore being ended on May 6th. But we beg to emphasize our readiness to continue our negotiations if it suits you too and to try to find a mutually satisfactory solution for our problems."

With regard to the negotiations with the American government, Mr. Walter Germann is commissioned to go to the U. S. A. again and to continue these together with
2802 Mr. Wilson and Mr. Whiteford. Mr. Germann receives the further commission to clear up the question of the possibility and expediency of bringing in a second firm of lawyers which could be consulted both by us and by Mr. Wilson in particularly difficult questions of negotiating tactics and also for the eventual technical liquidation.

3. It is resolved to reply to the letter of 3rd April, 1947 of the firm A. G. Becker & Co. Inc., New York, with the following cable: "acknowledge receipt of your letter april third which has found considerable interest stop may we ask you whether your government would approve of such a solution stop please be advised however that we shall not be able to take a definitive position in this matter prior to may seventh after which date we are prepared to negotiate with you along the lines of your letter of april third"

2803 **Intervenor's Exhibit No. 17-00**

TRANSLATION

Excerpt from the Minutes of the 112th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 13th May, 1947, at 8.45 a.m. on the business premises of the company.

.....

1. The board of directors hears the report of Mr. Walter Germann regarding his second trip to the U. S. A. Moreover it takes note of the cable which was addressed to our

company on 5th May, 1947, by the American Aniline and Chemical Corp. Inc., as well as of the cable sent on the same date by Mr. J. H. Rand, president of Remington Rand Inc. to Dr. Felix Iselin. The board of directors unanimously expresses its astonishment and its displeasure that the Remington group is attempting at the last moment to twist the gentlemen's agreement in existence up to 6th May, 1947, and to construe the existence of a contract. It is unanimously resolved to reject with due emphasis this incomprehensible attempt which clashes with the simplest principles of faith and trust. The relevant reply to the Remington group is to be prepared immediately in harmony with the legal positions in Switzerland and in the U. S. A. The board of directors reserves itself the right to approve the final text of our opinion at a further meeting fixed for Saturday, 17th May, 1947.

2. The board of directors takes note of the memorandum and of the additional verbal propositions which were submitted to Mr. Walter Germann on 9th May, 1947, in New York, by the firm A. G. Becker & Co. Inc. The discussion of these questions will be reserved for the next meeting.

2804 **Intervenor's Exhibit No. 17PP.**

TRANSLATION

Excerpt from the Minutes of the 113th meeting of the board of directors of the INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A.-G., held on 17th May, 1947, on the business premises of the company.

. . . . . .

2. The board of directors receives the proposals for the attitude to be adopted in respect of the cables of the American Aniline and Chemical Co. Inc. and from Mr. J. H. Rand, of 5th May, 1947. Before it forms an opinion on the composition of the text it examines in a thorough discussion

the overall situation in the U. S. A. and the special aspects which have resulted from the latest step of Remington Rand Inc. It is the unanimous opinion that the threat of court action which must be implicitly understood from the cables, even if this were only a desperate last minute step, represents a very unpleasant interruption of our efforts for a solution in the U. S. A. In the interests of an elimination of this interruption various possibilities are examined which could move Remington Rand Inc. to renounce its threat. However, the board of directors recognizes that in any compromise on our side under the existing threat there would be inherent an unfounded avowal of weakness which would only be used against by an inconsiderate partner to the negotiations. Therefore, after a long discussion, the adoption of the bridging solutions made in the proposal is renounced in the present reply to Remington Rand Inc. Rather the board of directors resolves on one hand to hold fast to the point of view represented by us of the non-
existence of any ties or obligations to Remington
2805 Rand Inc. since 6th May, 1947, and on the other hand,
to make the resumption of the discussions with this group dependent on their explicit recognition of the above fact. As far as the formulation of the latter condition is concerned, the opinion asserted by the board of directors will be accepted that the text should be kept as courteous as possible so that unnecessary rigour can be avoided.

The board of directors then resolves unanimously that the following two letters are to be addressed to Generaldirektor F. Richner in Zürich:

Letter No. 1:

"We refer to the cable from the American Aniline and Chemical Co. Inc. of 5th inst., the receipt of which will be acknowledged separately.

We were very astonished to receive this cable which seems incomprehensible to us. We must inform you that we have to refuse to recognize both the offer and also the presumption and the assertion of the acceptance of an offer

by the American Aniline and Chemical Co. Inc. as was stated and asserted in the first part of the cable. Moreover, we can by no means regard the American Aniline & Chemical Co. Inc. as a participant in our conversations nor recognize that it has a share in the object of these.

We deny that the steps undertaken by the American Aniline & Chemical Co. Inc., as described in the cable, create a contract between us or that there exists a contract between us and the American Aniline & Chemical Co. Inc. or Remington Rand Inc., or that we have any sort of obligations to the American Aniline & Chemical Co. Inc. or to Remington Rand Inc. or to any other third party.

Finally we find it important to stress that we reserve ourselves the right to assert all possible points of view to prove the above and to refute the legal validity of the step attempted by the American Aniline & Chemical Co. Inc.

2806 As far as our readiness to continue our conversations with Remington Rand Inc. is concerned, we have to establish as we announce in our letter to Mr. Bill Shorten, vice-president of Remington Rand Inc., of 21st April, 1947, that this willingness will now be made dependent on whether Remington Rand Inc. recognizes that since the expiry of the gentlemen's agreement on 6th May, 1947, there exist no agreements of any sort between ourselves and Remington Rand Inc. or any legal dummy or representatives of Remington Rand Inc.

We are taking the liberty of submitting to you enclosed copies of our today's cable to Mr. J. H. Rand, of which a copy will also be sent directly to Mr. Bill Shorten."

Letter No. 2:

"Referring once again to the cable of the American Aniline & Chemical Co. Inc. of 5th May, 1947, we inform you that we would have to reject the idea of a violation of the gentlemen's agreement should such an accusation be made by you or by Remington Rand Inc. As it was pronounced by the American Aniline and Chemical Co. Inc., as was done in the second part of the cable, this is irrelevant."

Moreover the board of directors also resolves unanimously to address the following cable to Mr. J. H. Rand: received your cable 5th stop very much disappointed by your attempt to distort our gentlemens agreement stop reject the idea that any contract between ourselves and remington or aacc or any body else of your group exists as main preceding conditions of gentlemens agreement are not atall fulfilled stop reserve unto ourselves all possible positions in support of our standpoint and in denial of the effectiveness of the action attempted by you stop as to aacc we reject the idea of their being a participant in our discussions or a party to our gentlemens agreement which by its very nature was strictly personal and not assignable stop we decline to regard aacc as an acceptable participant with us in the contemplated gaf deal stop today we have written two letters to mr. richner which might be translated
2807 as follows german text to be considered as sole original version first letter quote reference is had to the cable from aacc dated may 5th receipt of which has been separately acknowledged stop we were very much surprised to receive this cable which to us seems ill-advised stop we beg to inform you that we must decline to recognize both the offer and election and the alledged acceptance of aacc referred to and made in the forepart of the cable stop moreover we cannot regard aacc as having participated in any way in our discussions or in the subject-matters thereof stop we deny that such action on the part of aacc as described in the cable constitutes a contract between us or that a contract exists between ourselves and aacc or remington or that we have aby liability or any kind to aacc or remington or anyone else in the premises stop finally we wish to state that we reserve unto ourselves all possible positions in support of the foregoing and in denial of the effectiveness of the attempted action by aacc stop as to our readiness to continue our discussions with remington as expressed in our letter to mr. bill shorten vice-president of remington of 21 1947 we have to state that this readiness is now subject to the acknowledgement by remington that

no agreement of whatsoever kind is existing between us and remington or any alleged assignee or representative of them since the expiration of the gentlemens agreement on may 6th 1947 stop unquote second letter quote in further reference to the cable from aacc dated may 6th we beg to inform you that we would have to reject the idea of a violation by us of our gentlemens agreement if such a reproach would be raised by you or remington stop coming from aacc as it did in the latter part of the cable it is irrelevant stop unquote".

Moreover it is resolved that until the adjustment of the existing controversy all individual contact with representatives of the Remington group is to be avoided and that in principle official contact is only to take place in the presence of our lawyer.

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Intervenor's Exhibit No. 17QQ

2808 TRANSLATION

Excerpt from the Minutes of the 114th meeting of board of directors of the

INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.,

held on 13th June, 1947, on the business premises of the company.

.....

2. The president informs the board of directors regarding the execution of the resolutions in respect of the relations with Remington Rand Inc., especially regarding the visit of Generaldirektor F. Richner on 19th May, 1947. The condition made by us for the continuation of discussions with the Rekington group, according to which it must first be stated to us that since the expiry of the gentlemen's agreement on 6th May, 1947, no more agreements of any sort exist between ourselves and Remington Rand Inc. or any legal dummy or representative of the latter, has not been fulfilled

up to now. Rather, it is apparent from the reactions of Mr. J. H. Rand himself and of the American Aniline and Chemical Corporation that Remington Rand Inc. is still attempting to make us liable.

In the meantime a compromise proposal has been submitted to us by mediation of the Schw. Bankverein in Basle, for the solution of the differences of opinion with Remington Rand Inc. Without materially going into detail concerning this proposal which would be untenable for us in various points and which has become practically incapable of execution through the declaration of the Crédit Suisse in Zürich that it cannot undertake the role assigned to it together with the Schw. Bankverein and the U. B. of Sw, the board of directors resolves to keep to the principle according to which fresh discussions with Remington Rand Inc. or its representatives are only to be resumed
2809 after the declaration demanded by us has been given.

Dr. Iselin undertakes to inform the Schw. Bankverein in this sense, whereby, in view of eventual positive developments in the discussions with A.G. Becker & Co. Inc. reference is to be made to the fact that such a declaration from Remington Rand Inc. would have to be given without delay as we cannot maintain ad infinitum the conditional readiness/willingness for discussions which at present still exists.

Intervenor's Exhibit No. 17RR

2810 TRANSLATION

Excerpt from the Minutes of the 116th meeting of the board of directors of the

INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.,

held on 9th July, 1947, on the business premises of the company.

.....

2. The reply to the banking firm A.G. Becker & Co. Inc. to their letter of 12th June, 1947, has for technical reasons

not yet been sent off, as its text was again discussed with Mr. Wilson beforehand. The board of directors seizes the opportunity to subject the matter to a fresh discussion. The resolutions formed on 19th June, 1947, are maintained. The draft of the answering letter to A.G. Becker & Co. Inc. submitted meets with the approval of the board of directors.

3. Various attempts have again been made by Remington Rand Inc. to resume the joint consultations. The soundings in this respect, which were particularly undertaken by mediation of the Schw. Bankverein, were based on the material proposition that Remington would give up the assertion of the existence of a contract between American Aniline & Chemical Corporation and ourselves, insofar as we, firstly: would grant Remington an option of some length of time on our GAF participation, and, secondly: would approve the transfer of the Interhandel shares in the possession of Norsk Hydro to the Remington group with corresponding registration of a nominee for Remington in the sharebook. Subsequently Remington's demand for an option was given up in connection with the adjustment of the existing controversy, but on the other hand the demand for approval of the transaction with Norsk Hydro was maintained. The board of directors examines the situation very thoroughly but sees no possibility of complying with
2811 the proposal. It still seems incorrect to make any concessions under the pressure of threats on the part of Remington. Then the approval of the transaction between Norsk Hydro and Remington is untenable from two connections: firstly it robs our company of a valuable pledge in the direct controversy with Norsk Hydro regarding the vesting of our participation there by the Norwegian directorate for enemy property, and secondly the increase of American power factors inside our company seems inopportune in the circumstances still prevailing.

.....

Intervenor's Exhibit No. 18

2812 Filed Jul. 20, 1950

COPY OF CABLE SENT BY A.G. BECKER & COMPANY NEW YORK TO INTERHANDEL OCTOBER 14, 1946

INTERHANDEL DIREKTION
BASEL

"ACTING ON BEHALF OF CLIENTS AND A BANKING GROUP IN WHICH WE WILL PARTICIPATE WE ARE KEENLY INTERESTED IN BUYING FROM YOU GENERAL ANILINE CORP STOP WE UNDERSTAND THAT NEGOTIATIONS WITH WASHINGTON HAVE NOT PROGRESSED SUFFICIENTLY TO ENABLE YOU TO ENTER INTO DEFINITE NEGOTIATIONS WITH US AT THIS TIME BUT PLEASE KNOW THAT WE ARE PREPARED TO TALK SERIOUSLY WITH YOU WHEN YOU ARE READY TO NEGOTIATE WE WOULD APPRECIATE HEARING FROM YOU."

A. G. BECKER & CO.

Intervenor's Exhibit No. 19

2813 Filed Jul. 20, 1950

Internationale Industrie & Handelsbeteiligungen A.G.,
Basel, Switzerland.

Dear Sirs:—

With reference to the subject of our cable of October 14, 1946, we desire to express our willingness to cooperate with the Government and with you for the Americanization of General Aniline & Film Corporation in a way that you and ourselves may participate in the stock ownership. Our willingness is not limited to any specific means, but extends to any method which may at the time be deemed to be feasible or designed to accomplish, amongst other things, the chief objective of seeing that a majority of the outstanding shares be acquired absolutely by genuine American interests.

In some explanation of this general statement, we would add that as soon as shares become available, we intend to

promote and provide competent and adequate management. The shares could be purchased by us on the understanding that after a reasonable period of operation under the new management they would be made the subject of a public offering, the terms and conditions of the public offering and the time thereof to be mutually agreed upon between us. The terms of payment by us could be arranged to our mutual satisfaction. It seems to us that until the shares are offered to the public, and until they will have been fully paid for by us, the voting power thereof should be subjected to a voting trust, all the voting trustees to be American citizens whom we would approve. Furthermore, we should like to have the right of first refusal upon any shares remaining in your minority ownership which you might later on desire to dispose of, at the same price and terms as those upon which you could dispose of them bona fide to others.

Yours very truly,

IHS;ics A. G. BECKER & Co., INCORPORATED.

* * * * * * * * * *

2856 Filed Jul. 20, 1950

Intervenor's Exhibit No. 23

ASSIGNMENT

KNOW ALL MEN, that—

In consideration of the sum of One ($1.00) Dollar, and other valuable considerations, paid by the American Aniline & Chemical Company, Inc. to Remington Rand Inc., the receipt whereof is hereby acknowledged, Remington Rand Inc. hereby sells, assigns, transfers and sets and delivers over unto American Aniline & Chemical Company, Inc., its successors and assigns, and to its own proper use and benefit, all its right, title and interest in and to a so-called "gentlemen's agreement", partly written and partly oral, as supplemented, amended, modified and extended from time to time between Internationale Industrie und Handelzbeteili-

gungen A. G., and Remington Rand Inc.

This assignment is made, executed and delivered without any representation, warranty of any character or nature whatsoever being made by Remington Rand Inc., including, but without limiting the generality of the foregoing, any representation respecting the validity or enforceability of the rights of Remington Rand Inc. under the "gentlemen's agreement" aforesaid, it being the essence of this agreement, and a condition precedent thereto, that there shall be no recourse of any character or nature for any reason whatsoever against Remington Rand Inc., arising out of or connected with this agreement.

Remington Rand Inc. hereby constitutes American Aniline & Chemical Company, Inc., its attorney, in its name, or otherwise, but at the cost and expense of American Aniline & Chemical Company, Inc., to take all such measures, legal or otherwise, which American Aniline & Chemical Company, Inc., deems necessary or proper for the complete enforcement and enjoyment of the rights assigned to it hereunder or intended so to be.

IN WITNESS WHEREOF, Remington Rand Inc. has hereunto set its hand and seal in the City of New York, State of New York, on this first day of May, 1947.

REMINGTON RAND CO.

By T. F. ALLEN,
Vice-President.

Attest:

By J. A. W. SIMSON,
Secretary

(Seal)

• • • • • • • • • •

2887 Filed Jul. 20, 1950

Intervenor's Exhibit No. 29

Basle, March 17th, 1947.

Mr. General Manager F. Richner
c/o Union Bank
Zurich.

Dear Mr. General Manager,

We refer to the negotiations which have taken place on the 14th of this month in Zurich with you and the other representatives of Remington Rand Inc.

Our board at its meeting to-day has most carefully considered anew the question of granting immediately an option upon the terms proposed by you. But we are very sorry that the board felt that nothing decisive has changed since the basic situation was examined in January of this year. Therefore our board is of the opinion, that under all circumstances the clarifications which are deemed necessary by us should first be made before we can make a new decision in the matter. Furthermore we deem it necessary to send a representative of our company to the United States without delay to obtain these clarifications. In this connection we have examined the possibility whether the trip can be so arranged that the negotiations in Switzerland can be taken up again within the next week. For practical reasons beyond our control this seems impossible. Therefore, we repeat the suggestion which we have heretofore made orally, that on their part the American representatives of Remington Rand return to the United States, where the negotiations can be continued as well. To emphasize our good faith in doing this, we would instruct our representative while he is in the United States to work intensively with you, in obtaining the necessary clarifications. If necessary, we will appoint a delegation to go to the United
2888 States immediately which will be fully empowered to act.

We would like to confirm expressively to you on this occasion our loyalty to the Remington group. In this spirit we declare:

1. that we are prepared to extend the gentlemen agreement which exists between us definitely in such a way that it will be only canceable again after 14 days from the date of April 15th, 1947,

2. that the granting of an option with a longer duration to Remington Rand Inc. is intended in case the findings in the United States have convinced our board, that the way which was proposed by you, is the best.

Regarding the question of the registration of shares into the name of Remington Rand Inc. in our shareholders-ledger, we beg you in the sense of our oral discussion not to press the request at the present time.

We are, my dear General Manager, with the highest regards,

Yours,

sig. ISELIN sig. GERMANN.

* * * * * * * * * *

2894 Filed Jul. 20, 1950

Intervenor's Exhibit No. 36

Dr. Sturzenegger. First Meeting, Tuesday 15.4.

Second Meeting, Monday 21.4.

Awaiting Dr. Iselin. Yesterday morning. Very difficult situation.

Conclusion. In view of the whole situation we can not comply with the wishes of R. R.

Germ. is impressed by influence of R. R. We expected certain assurance. Certain priority to R. R.

Shorten. We told that before. We realized the difficulty. On the other hand direct contact with Mr. Clark and Cook. Discussions were weak and friendly. They must be continued. He has to try to clarify the situation. We must know that our private deals must meet with the approval of the government.

We will continue the negotiations.

2895 Mr. Germann will see very soon again Mr. Rand. He is leaving on 26th of A. Letter to Mr. Shorten April 21, 1947 cancelling the gentleman agreement on May 6th.

Germann. If the Got. would agree to the private deal that could rise difficulties for the Got. Got. still thinks on public sale. It is the mutual desire of the Got. off. to continue these discussions. R. R. is an eligible company. We are exploring R. R. possibilities, our possibilities afterwards. We are sitting down with R. R. We would not be with the help of R. R. in opposition to the Got. We would prefer to have a solution with it in opposition to the Got.

We will not loose the possibility to make an arrangement with the Got. We are still in a period of discussions we would not like to change the atmosphere.

2896 *Shorten.* Chief Justice Vinson came in after 10 minutes you left.

Germann. The president and D. Sturzenegger could come over.

Contacts with Rand. Assist to the overseas arguments on the 28th Avril.

Rand sent a cable on the law being reintroduced. R. gets cable from the minority stockholders from all over the States.

General impression of R. R. group is excellent. We have not seen any concrete signs or hints.

Mr. Cummings. Got. wants 1. Americanization; 2. Settle; 3. Public sale; 4. R. R. suitable buyer. No assurance of the possibility but it might be advisable to "gamble" on this possibility.

Allen. R. proposition is ahead of all other groups. No definite assurance.

Mac N. gave the impression the prop. is very well prepared, but no hint in respect of the results.

2897 *Germ.* The gentlemen agreement was used in U.S.A. We are of the opinion no binding between should be now.

In order to comply to the wishes of Govt. we have the impression that we have a better standing with Got. if we have no gentlemen agreement. If we would have asked whether R. deal would be agreeable we would have got no answer.

Shorten. Is your board still expecting a statement in favor of R. R.

Germann. If we go back to the Got. and get no proposition from the Govt. and if the situation has not changed we shall go with R. R.

Norwegian shares not yet sent in:

5000 Hambros
350 Lela von Meister board decision
200 Rem. Rand Dey. 19th, 1945.

Sturgenegger. Stockholders would reproach us if
2898 R. R. fails if we would not beforehand explored all possibilities with the Got.

Shorten. We should.

How much of the common stock.

100,000 pref. stock.

110,000 com. full paid. incl. Hambros. halve paid.

• • • • • • • • • •

3356 Filed Jul. 20, 1950

Intervenor's Exhibit No. 47

TRANSLATION

23.7.46.

Recapitulation of the declaration made to Mr. Richner.

In a conversation which took place on Tuesday, 23rd July, 1946, the declarations made to Mr. Richner by the board of directors of the Internationale Industrie- & Handelsbeteiligungen A.-G. were recapitulated as follows:

The company declared itself prepared to accept an offer from an American group for the total sale of its participation in the General Aniline and Film Corporation, New York.

As essential condition for the acceptance of such an offer it is provided that all discrimination against Interhandel,
against all the members of its board of directors,
against a member of its management,
against the preferred shareholders, i.e. Industriebank A.-G, Basle,
Societe auxiliaire de Participations et de Depots S.A., Lausanne,
and against all the members of their boards of directors, as well as against all persons or companies who have been discriminated against because of their relation to the Interhandel group, must cease completely.

1. The participation of the Internationale Indus-
3357 trie- & Handelsbeteiligungen A.-G. consists of 455,
448 common A shares of General Aniline and Film Corporation and 2,050,000 common B shares of General Aniline and Film Corporation.

2. Price:

a. Payment of $25,000,000.—converted into Swiss francs at the current official rate (about Frs. 4.30 per $), or the counter-value in gold ingots at Basle in sufficient quantity to obtain the counter-value in Swiss francs of $25,000,000.—calculated at Frs. 4.30.

b. Delivery of 52,000 fully paid Interhandel shares and of 28,000 50% paid up Interhandel shares.

c. Release of Internationale Industrie- & Handelsbeteiligungen A.-G.'s bank accounts to the value of about one million dollars,
release of the dividends for 1940,
release of the dividends for 1941,
to a total of about one million dollars.

3. The payments and deliveries of shares or ingots are to be made at Basle without deductions of any kind. These payments and deliveries are to be made to Interhandel absolutely unrestrictedly without being encumbered in any way by the Allied authorities either at the time of payment or at a later date.

3358 4. This declaration has been given bindingly up to 30th June, 1946 and can be terminated from that date under observance of a period of notice of 15 days.

5. This declaration is not to be interpreted in any way as a surrender by Interhandel, either in law or in fact, of its positions.

3359 Filed Jul. 20, 1950

Intervenor's Exhibit No. 48

THE CODE OF OBLIGATIONS

First Part—General Provisions

First Title—Origin of Obligations

First Chapter—Obligations Resulting from Contract

1.

A. Entering into Contract.

A contract requires the mutual agreement of the parties.

I. Agreement of parties in general.

This agreement may be either express or implied.

3.

II. Offer and acceptance.

1. Offer with time limit for acceptance.

Where a person offers to another to enter into a contract and fixes a time limit for acceptance of such offer, such person is bound by his offer until the expiration of the said time limit. He is only released if he does not, before the expiration of such time limit, receive from the other party notice of acceptance.

11.

B. Form of contracts.

Contracts are valid without any special form unless the law provides otherwise.

1. Requirements and bearing in general.

In the absence of a contrary provision concerning the bearing and effect of a legally prescribed form, its observance is a condition of the validity of the contract.

18.

D. Interpretation of contracts, fictitious transactions.

When interpreting the form and the contents of a contract, the mutually agreed real intention of the parties must be considered and not incorrect terms or expressions used by the parties by mistake or in order to conceal the true nature of the contract. A debtor cannot plead the defence of a transaction being fictitious against a third person who has acquired the claim on the faith of a written acknowledgment of debt.

3360 22.

IV. Preliminary contracts.

A party may by contract bind himself to enter into a future contract. Where the law for the protection of the parties prescribes a certain form for the validity of the future contract, the preliminary contract must also be made in that form.

Second Title——Effect of Obligations

First Chapter—The Performance of Obligations

68.

A. General principles.

1. Personal performance.

The debtor is only bound to perform personally where his person is essential to the performance.

Third Title—The Discharge of Obligations

Fourth Title—Obligations With Special Modalities

First Chapter—Joint Liabilities and Rights

Second Chapter—Conditions

156.

II. Mala fide prevention.

A condition deemed performed where the event was prevented from happening by one of the parties contra bonam fidem.

Intervenor's Exhibit No. 49

3361 SWISS CIVIL CODE

Preliminary Chapter

A: Application of Law.

1. The Law must be applied in all cases which come within the letter or the spirit of any of its provisions. Where no provision is applicable, the judge shall decide according to the existing Customary Law and, in default thereof, according to the rules which he would lay down if he had himself to act as a legislator. Herein he must be guided by approved legal doctrine and case law.

B: Limits of civil rights.

I. Misuse of a right.

2. Every person is bound to exercise his rights and fulfill his obligations according to the principles of good faith. The law does not sanction the evident abuse of a man's rights.

II. Bona fides.

3. Bona fides is presumed whenever the existence of a right has been expressly made to depend on the observance of good faith. No person can plead bona fides in any case where he has failed to exercise the degree of care required by the circumstances.

III. Discretion of judge.

4. Where the law expressly leaves a point to the discretion of the judge, or directs him to take circumstances into con-

sideration, or to appreciate whether a ground alleged is material, he must base his decision on principles of justice and equity.

3362 Filed Jul. 20, 1950

Intervenor's Exhibit No. 50

FEDERAL COUNCIL DECREE OF FEBRUARY 16, 1945 AS AMENDED ON

April 27, 1945; July 3, 1945; November 30, 1945; February 26, 1946; April 29, 1947; and February 11, 1948

Article 2.

Assets of any kind [bank accounts in Swiss or foreign currency, securities, bank notes, gold, jewelry, merchandise —no matter how and where they are kept, whether in open or closed depots or in safes—rights or participation of any kind, real property, etc.] which are situated in Switzerland or administered from Switzerland and which are directly or indirectly kept on the account or on the behalf of natural or juridical persons of private or public law, partnership or personal association, having or having had after February 16, 1945 their domicile or seat of business headquarters in Germany, or in territory occupied by Germany, shall only be conveyed or encumbered with the consent of the Swiss Compensation Office, provided Article 5 does not hold otherwise.

This provision is also applicable to property situated in Switzerland or administered from Switzerland and owned by juridical persons of private or public law, partnership or personal association, having their domicile or seat of business headquarters in Germany, or in territory occupied by Germany have a controlling interest either directly or indirectly and have or having had after February 16, 1945 their domicile or principal business headquarters in Germany, or in Proctectorat of Bohwen & Mahren, or in terri-

tory occupied by Germany, or who had their domicile or seat of business headquarters in one of these places.

ARTICLE 8

Through payments made contrary to the dispositions of this federal council decree the duty to make those payments to the Swiss National Bank is not abolished.

Everybody, who for his own account or as repre-
3363 sentative or commissioner, does convey assets without observing the regulations of this federal council decree, can be requested to pay the countervalue of those assets as fixed by the Swiss Compensation Office to the Swiss National Bank.

ARTICLE 9.

The Federal Economic Department is authorized to issue the decrees necessary for the purpose of the execution of this Federal Council decree.

This Compensation Office is authorized to execute the Federal Council decree and supplementary decrees of the Federal Economic Department. The Swiss Compensation Office is authorized to request anyone to clarify any set of facts which might be of importance for the execution of this Federal Council decree. The Swiss Compensation Office may make examination of the books and controls, especially of those firms and persons who do not, or do not satisfactorily, fulfill their obligation to give information, or against whom a justified suspicion exists that they have violated this Federal Council decree.

In urgent cases, the Swiss Compensation Office, for the purpose of the execution of this Federal Council decree, might demand the preliminary payment to the Swiss National Bank or the deposition of any asset with the Swiss National Bank, or any agency designated by it. The Swiss Compensation Office may request the cooperation of the police authorities. Furthermore, it might, in cases of doubt, in the scope of a preliminary measure, subject payments and assets to the restrictions contained in Articles 1 to 3 of this Federal Council decree.

3364 ARTICLE 9 BIS.

The Federal Tariff Administration, the General Administration of the Post and Telegraph Office, and the Swiss Transportation Administration shall undertake measures necessary for the assurance of payments to the Swiss National Bank.

The executive and judicial authorities of the Federation of the Cantons and Municipalities shall give any information to the Swiss Compensation Office necessary to the clarification of any set of facts which might be important to the execution of this decree.

ARTICLE 10

Everybody, who for his own account or as representative or commissioner of a natural or juridical person of private or public law, commercial partnership or corporate bodies, or as an officer of a corporate body of private or public law, makes payments coming within the scope of this Federal Council decree in any other way than to the Swiss National Bank,

Who.....

Who, in one of the aforementioned capacities disregards the regulation of this Federal Council decree in conveying assets.

Who.....

Who.....

Who will be liable to a fine up to Frs. 10,000, or to imprisonment up to twelve months, both sanctions can be jointly applied.

3365 Filed Jul. 20, 1950

Intervenor's Exhibit No. 51

KNOW ALL MEN BY THESE PRESENTS: That Internationale Industrie- und Handelsbeteiligungen, A. G., also known as Societe Internationale pour Participations Industrielles et Commerciales S.A., (formerly named Internationale Gesellschaft fuer Chemische Unternehmungen, A.G. and

Societe Internationale pour Enterprises Chemiques S.A. and I.G. Chemie), a corporation duly organized and existing under the laws of the Confederation of Switzerland, and having its principal office for the transaction of business in Basle, Switzerland, herein called "the Corporation", has nominated, constituted and appointed, and by these presents does nominate, constitute and appoint John J. Wilson, a citizen of the United States of America, residing in the City of Washington, District of Columbia, in the United States of America, and Raymond H. Hackett, a citizen of the United States of America residing in the City of Stamford, State of Connecticut, in the United States of America, or the survivor of them, its true and lawful agents and attorneys-in-fact, for it in its behalf, and in its name, place and stead, to do and perform all and singular the following acts and things:

1. To institute, conduct, carry on, consummate and conclude with the officers or representatives of the Government of the United States of America, or of any department or agency thereof, any and/or all negotiations, directly or indirectly related to or connected with any and/or all the property, assets, rights, affairs and business of the Corporation, including more particularly but without limiting the generality of the foregoing, the 455,448 shares of the Common A stock and 2,050,000 shares of the Common B stock of General Aniline & Film Corporation, a Delaware corporation, allegedly seized by and vested in Hon. Henry Morganthau, Jr., as Secretary of the Treasury of the United States, by virtue of a Vesting Order, dated February 16, 1942, and allegedly vested in and by the Hon. Leo T. Crowley, as Alien Property Custodian of the United States (and in his successors in office), by virtue of a Vesting Order, dated April 24, 1942, and now held by and allegedly vested in Hon. Tom Clark, as Attorney General of the United States and as the successor to and/or as the Alien Property Custodian including all dividends or other distributions, in cash, stock, property or otherwise, paid or made by

3366 General Aniline & Film Corporation on and/or in

respect of the shares of stock aforesaid and received by Hon. Henry Morgenthau, Jr. as Secretary as aforesaid and/or by his representatives, and/or by Hon. Leo T. Crowley and/or by his representatives and/or by his successors in office or in interest, including any and all avails of any of the foregoing; and to make, execute, acknowledge, seal and deliver any and all agreements whatsoever in relation to the foregoing which, in the sole judgment and discretion of the said attorneys-in-fact, shall or may be necessary or desirable for or on behalf of the Corporation.

2. To ask, demand, sue for, submit to arbitration, collect and receive the property, shares of stock and all other rights of the Corporation herein referred to and, in the furtherance thereof, to take all such step(s) or action(s), institute, conduct and carry on to a final conclusion and determination all such law suit(s) or other proceeding(s), either at law, in equity or otherwise, in such court(s) or such other forum(s) or tribunal(s) in the United States of America, or elsewhere, which in the sole judgment and discretion of the said attorneys-in-fact, may seem best or may be necessary or desirable to take for or on behalf of the Corporation, or which may be in aid of or for the benefit of the Corporation in obtaining the immediate possession for and on behalf of the Corporation of all of the shares of stock and rights aforesaid, all dividends, whether in cash or in stock, and all other avails and distributions paid, or made thereon, or in respect thereof; and all right, title and interest in each and all of the foregoing shares of stock and/or in the dividends and avails paid or made thereon; and to give effectual receipt(s) and full and complete acquittance(s) therefor and to compromise, adjust and settle any or all such claims, demands, suits, actions and proceedings, and to discontinue and finally terminate the same, all upon such terms, conditions and/or arrangements as, in the sole judgment and discretion of the said attorneys-in-fact, may be necessary or desirable.

3. To defend, answer and oppose any and all claims, suits or proceedings, in law, in equity or otherwise, arising out

of or connected with, directly or indirectly, the alleged vesting or seizure by the Secretary of the Treasury of the United States or by the Alien Property Custodian of the United States, or by any other officer or agent of the
3367 United States of all or any the shares of stock aforesaid and of all dividends or avails paid or made thereon allegedly pursuant to the Trading with the Enemy Act of October 6, 1917, as amended, (U. S. C. Title 50, Appendix, Sections 1 to 38, inclusive) or otherwise, and in the exercise of the foregoing powers, to make, sign, execute, acknowledge and, where and when required, to file all such pleas, pleadings, answers, motions, briefs, exceptions, appeals, appeal bonds and all other papers and documents connected with or incidental to the foregoing which, in the sole judgment and discretion of the said attorneys-in-fact, may be necessary or desirable in the premises.

4. To do and perform every and all act(s) and thing(s) of whatsoever character, nature or description necessary or required to be done by the Corporation to perform, comply with, consummate, keep and carry out all and singular the acts, transfers and assignments, terms and conditions on the part of the Corporation to be complied with, kept and performed in a certain agreement, dated this day and to which reference is hereby made, between the Corporation and American Aniline & Chemical Company, Inc., a Nevada corporation, or in any subsequent supplement thereto or modification thereof and to execute and deliver to American Aniline & Chemical Company, Inc. all instruments and documents of transfer and assignment, receipts, discharge and acquittance as may be required and/or which may be necessary or desirable in connection with or incidental to the closing and/or consummation of such transaction with American Aniline & Chemical Company, Inc. upon the terms of the agreement aforesaid, or any supplement thereto or modification thereof, and to do and perform all and every act(s) and thing(s) necessary or required to be done to transmit and deliver to the Corporation, or upon its order, the consideration received by the said attorneys-in-fact

upon the consummation of the agreement last aforesaid with American Aniline & Chemical Company, Inc., as supplemented or modified.

American Aniline & Chemical Company, Inc. shall be under no obligation to look to the application of the proceeds payable to the Corporation under the said agreement.

5. To hire and employ such attorneys-at-law, agents, servants, represetnatives and/or attorneys-in-fact, and to make, execute and deliver any and all contracts with such
3368 attorneys-at-law, agents, servants, representatives and/or attorneys-in-fact, and/or any of them, which, in the sole judgment and discretion of said attorneys-in-fact, may be necessary and advisable in the execution or furtherance of the powers hereby conferred upon the said attorneys-in-fact or intended so to be.

6. To do and perform any and all acts and things necessary or incidental to the foregoing powers, or any of them, or necessary or desirable in connection with the execution of the said powers, or any of the same, and the Corporation hereby ratifies and confirms all and every the acts and things that the said John J. Wilson and Raymond E. Hackett, its said attorneys-in-fact, shall do or cause to be done, in or about or concerning the premises, or any part thereof; and all such instruments of whatsoever nature, signed, executed, sealed and delivered by its said attorneys-in-fact, are hereby ratified and confirmed by the Corporation.

7. The Corporation hereby irrevocably vests its said attorneys-in-fact with all the powers aforesaid and renounces all right to revoke any of said attorneys' powers or to appoint any other person to execute the same, or personally to perform any of the acts which its said attorneys-in-fact are hereby authorized to perform, until such time as a certain agreement, dated this day and to which reference is hereby made, between the Corporation and American Aniline & Chemical Company, Inc., is fulfilled or terminated upon the terms thereof.

8. The powers hereby conferred on John J. Wilson and Raymond E. Hackett, as attorneys-in-fact, shall be exer-

cised by them jointly, provided, however, that, in case of the death of either of said attorneys, all of the powers hereby vested in them jointly shall be vested in and may be exercised solely by the survivor of them.

9. Nothing in this power of attorney contained, nor in the execution thereof, shall constitute, or be deemed or construed to constitute, a transfer or assignment by the Corporation to its said attorneys-in-fact, or to anyone, of any of its property, assets, shares of stock, or dividends or avails made or paid thereon, or of any interest
3369 therein, whether of the character specified herein or otherwise.

IN WITNESS WHEREOF, the said Internationale Industrie- und Handelsbeteiligungen, A. G., also known as Societe Internationale pour Participations Industrielles et Commerciales S. A., (formerly named Internationale Gesellschaft fuer Chemische Unternehmungen, A. G. and Societe Internationale pour Enterprises Chemiques S. A. and I. C. Chemie) has caused these presents to be signed by its thereunto duly authorized by proper and appropriate corporate action, this day of January, One thousand nine hundred and forty seven.

INTERNATIONALE INDUSTRIE-UND HANDELSBETEILIGUNGEN, A. G. also known as SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A. (formerly named INTERNATIONALE GESELLSCHAFT FUER CHEMISCHE UNTERNEHMUNGEN, A. G. and SOCIETE INTERNATIONALE POUR ENTERPRISES CHEMIQUES S. A. and I. G. CHEMIE).

By .....
Its Chairman.

(Annex hereto a certified copy of the resolution of the Board of Directors of Chemie authorizing the execution of the foregoing power of attorney and have the same regularly acknowledged before a United States Consul in Switzerland).

3370 Filed Jul 20 1950

Intervenor's Exhibit No. 52

AGREEMENT, made January , 1947, between INTERNATIONALE INDUSTRIE-UND HANDELSBETEILIGUNGEN, A. G., also known as Societe Internationale pour Participations Industrielles et Commerciales, S. A., (formerly named Internationale Gesellschaft fuer Chemische Unternehmungen, A. G. and Societe Internationale pour Enterprises Chemiques S. A. and I. G. Chemie), a corporation duly organized and existing under the laws of the Confederation of Switzerland, and having its principal office for the transaction of business in Basle, Switzerland, herein called "Chemie", and American Aniline & Chemical Company, Inc., a Nevada corporation, herein called "the Optionee".

THE PARTIES SIGNATORY HERETO HEREBY AGREE AS FOLLOWS:

FIRST: Chemie represents, warrants and agrees:

(a) That General Aniline & Film Corporation, herein called "the Chemical Company", is a Delaware corporation, duly organized and existing having outstanding
3371 529,700⅔ shares of Common A stock, without par value, out of an authorized issue of 3,000,000 shares of said stock and having outstanding 3,000,000 shares of Common B stock, without par value, out of an authorized issue of 3,000,000 shares of said stock, and that all of such outstanding stock is duly issued and fully paid and non-assessable; that 950,000 shares of the Common B stock are owned by and held in the Treasury of the Chemical Company.

(b) That Chemie is the lawful holder and owner of 455,448 shares of the Common A stock and 2,050,000 shares of the Common B stock of the Chemical Company and has full and lawful right and authority to enter into this agreement upon the terms and conditions hereof; that such shares constitute the only shares of the Chemical Company owned by Chemie, directly or indirectly.

(c) That the shares of the Chemical Company aforesaid were allegedly seized by and vested in the Hon.
3372 Henry Morgenthau, Jr., as Secretary of the Treasury of the United States, by virtue of a vesting order, dated February 16, 1942, and allegedly vested in and by the Hon. Leo T. Crowley, as Alien Property Custodian of the United States, and in his successors in office, by virtue of a vesting order, dated April 24, 1942, and are now held by and allegedly vested in the Hon. Tom Clark, as Attorney General of the United States, and as successor to and as the Alien Property Custodian; and as a consequence of the vesting aforesaid, all dividends or other distributions, in cash, stock, property or otherwise, paid or made by the Chemical Company on and/or in respect of the shares of stock aforesaid are held by and allegedly vested in the Alien Property Custodian and his successors in office or in interest.

SECOND: Chemie hereby grants to the Optionee, subject, however, to all the terms and conditions hereof, an option to purchase from it 455,624 shares of the Common A stock and 2,050,000 shares of the Common B stock
3373 of the Chemical Company, all without par value, at the price hereinafter fixed, which option shall be exclusive and shall be good and irrevocable and may be exercised as a whole at any time up to five o'clock p.m. (Eastern Standard Time, U. S. A.) on April 30, 1947.

In case the Chemical Company shall, at any time(s) after the execution of this agreement and prior to the delivery of the shares optioned hereunder declare, pay or authorize the payment of any dividend upon its shares, or make any other distribution in respect of such shares in cash, property, securities or otherwise, then, upon the delivery date hereunder, in addition to the shares optioned hereunder, there shall also be delivered to the Optionee for the purchase price aforesaid and without additional cost to the Optionee, such cash, property, securities or other distributions so declared paid or distributed with respect to the shares optioned hereunder.

3374 In case the Chemical Company shall, at any time after the execution hereof and prior to the delivery of the shares hereunder, subdivide its outstanding shares of stock of either class into a greater number of shares by reclassification or otherwise, the number of shares of such class deliverable hereunder shall be increased proportionately and, in like manner, in case of any combination of shares of stock of either class, by reclassification or otherwise, the number of shares of such class deliverable hereunder shall be reduced proportionately; in either case, without any change in the purchase price hereunder.

THIRD: The option price of such shares shall be twenty five million dollars, or at the option of Chemie such sum shall be payable in Swiss francs converted at the present official rate of exchange of about 4.30 per dollar.

3375 FOURTH: The Optionee, if it desires to exercise such option, shall give written or cable notice of its election to purchase the shares aforesaid to Chemie at any time prior to five o'clock p.m. (Eastern Standard Time, U. S. A.) on April 30, 1947, at its principal office aforesaid, and thereafter delivery of the shares optioned hereunder shall be made to the Optionee against payment of purchase price therefor in cash or in current New York funds at the office of Remington Rand Inc., No. 315 Fourth Avenue, New York, N. Y., U. S. A., or at such other place as the Optionee may have specified in such notice, at a time to be fixed by the Optionee in such notice, which time shall be not earlier than ten days nor later than thirty days after the date of the exercise of the option hereby granted. Time shall be deemed to be of the essence of this agreemnt. At the time of delivery hereunder Chemie shall have paid, in respect of such transfer and assignment, such taxes, if any, and all stock certificates deliverable hereunder shall have affixed thereto and cancelled, such tax stamps, if any, as

3376 may be required by the laws of the Confederation of Switzerland, the United States of America, and the State of New York respectively. Stock certificates representing such shares shall be duly endorsed in blank, or

accompanied by proper and appropriate instruments of transfer and assignment.

FIFTH: In case the Optionee exercises the option granted hereunder its obligation hereunder thereafter to purchase the optioned shares and pay the purchase price therefor, shall be subject to the following express conditions precedent, to wit:

(a) That Chemie shall have fully performed and complied with all the obligations and conditions herein contained on its part to be performed and complied with.

(b) That, at the time of delivery hereunder, the Chemical Company shall have outstanding 529,700⅔ shares of Common A stock, without par value, and 3,000,000 shares
3377 of Common B stock, without par value, 950,000 shares of which shall be owned and held in the Treasury of the Chemical Company; and that the Chemical Company shall have no capital stock outstanding, except as specified in this clause (b).

(c) That, at the time of delivery hereunder, the United States of America, or its Attorney General as Alien Property Custodian of the United States, or his successor in office or in interest as Alien Property Custodian, shall have returned to Chemie and placed it in possession of the shares of Common A and B stock aforesaid, including all dividends or other distributions, whether in cash, stock, property or otherwise, declared paid or made by the Chemical Company in respect of such shares subsequent to February 16, 1942.

(d) That, at the time of delivery hereunder, the United States of America, or one of its departments or agencies thereunto duly authorized, shall have waived and released any and all interest or claim under the vesting orders
3378 aforesaid or otherwise in and to the shares optioned hereunder and the dividends and other distributions and avails aforesaid thereon.

SIXTH: In case the Optionee exercises the option granted hereunder, the obligations of Chemie to deliver the optioned shares shall be subject, as express conditions precedent, to the conditions stated in sub-paragraphs (c) and (d) of paragraph FIFTH.

SEVENTH: Chemie agrees to take all such proper and appropriate legal and diplomatic steps and action(s) as it may be advised is or are necessary and required to procure the immediate return to and possession by it of the optioned shares and all dividends and distributions declared made or paid thereon subsequent to February 16, 1942 in order to enable it to make delivery of the optioned shares to the Optionee upon the terms hereof.

In order to facilitate the bringing about of the return and possession aforesaid Chemie agrees to execute
3379 and deliver simultaneously with the execution of this agreement a power of attorney in the form hereto annexed marked Exhibit A.

Chemie hereby renounces all right to revoke any of the attorneys' powers or to appoint any other person(s) to execute the same, or personally to perform any of the acts which its said attorney(s)-in-fact are hereby authorized to perform until such time as this agreement is fulfilled or terminated upon the terms thereof.

Chemie agrees that, upon the return to and possession by it of its fully paid Common shares aggregating approximately fifty two thousand in number and half paid Common shares aggregating approximately 28,000 in number by the Alien Property Custodian as contemplated hereunder, it will take all such proper and appropriate corporate or other action as may be legally required to cancel and retire
3380 all such shares so that the same will no longer be outstanding and may never be reissued.

EIGHTH: If the Chemical Company, or any subsidiary thereof, at the time of delivery hereunder shall have any litigation pending or in prospect, or if at the time of delivery any substantial part of the plant of the Chemical Company, or of any subsidiary or affiliated company should be substantially destroyed by fire or other cause, or if there shall have occurred a major catastrophe, or a substantial change in national or international affairs or a national calamity or an act of God which, in the judgment of the Optionee will or may materially disrupt the financial

markets of the United States in the nature of "force majeure", then the Optionee at its election may terminate this agreement and its obligations hereunder.

3381 NINTH: Nothing in this agreement contained, nor in the execution thereof, shall constitute, or be deemed or construed to constitute, a transfer or assignment by Chemie to the Optionee, or to anyone else, of any of its property, assets, the shares of stock aforesaid, or of any dividends or avails declared, made or paid thereon.

TENTH: Notices under this agreement shall be by cable or in writing and if to Chemie shall be sufficient in all respects if delivered in person or sent by mail, postage prepaid, or by cable to Internationale Industrie-und Handelsbeteiligungen, A. G., Basle, Switzerland, and if to the Optionee if delivered in person or sent by mail, postage prepaid, or by cable, to American Aniline & Chemical Company, Inc., c/o Remington Rand Inc., No. 315 Fourth Avenue, New York, N. Y., U. S. A.

3382 IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

INTERNATIONALE INDUSTRIE-UND HANDELSBETEILIGUNGEN, A. G. also known as SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A. (formerly named INTERNATIONALE GESELLSCHAFT FUER CHEMISCHE UNTERNEHMUNGEN, A. G. and SOCIETE INTERNATIONALE POUR ENTERPRISES CHEMIQUES S. A. and I. G. CHEMIE).

By .....
Its Chairman.

AMERICAN ANILINE & CHEMICAL COMPANY, INC.

By .....
President

Attest:

.....
Secretary.

3386 Filed Jul 20 1950

Intervenor's Exhibit No. 55.

TRANSLATION

Translator's remarks in brackets: [....]

....at the premises of Internationale Industrie- und Handelsbeteiligungen AG., Basle

Present: from Interhandel

From the Board of Directors,
Dr. Felix Iselin
Mr. August Germann
Dr. Hans Sturzenegger

from the Management,
Mr. Germann.

from Union Bank of Switzerland,
Mr. F. Richner, General Manager
Dr. Ulrich Wehrli.

The representatives of Interhandel give the declaration, which is binding for the Corporation, that Interhandel is willing/ready to accept an offer for the purchase of its participation in General Aniline & Film Corporation, U. S. A., if such is submitted by Union Bank of Switzerland, respectively by one of the groups represented by it, and to sell that participation, provided that the offer contains the binding obligation to pay as purchase price to Interhandel:

$25'000'000, as well as
52'000 fully-paid shares of Interhandel, and
28'000 half-paid shares of Interhandel;
in addition an amount of approximately $2'000'000 resulting from former banking accounts and dividend earnings has to stand at Interhandel's free disposal.

The acceptance of the offer will be made under the
3387 following conditions:

a) that $25 millions in free Swiss Francs transferred to Basle or to a corresponding gold deposit account with the Swiss National Bank in Switzerland are put at

Interhandel's disposal. Thereby Interhandel would also give its agreement to keep blocked this gold deposit account with the National Bank for some time.

b) that the above amount of approximately 2 millions is released to its full extent in the U. S. in the sense of putting it on wholly equal terms with corresponding assets of Swiss firms and persons which never were on the black list.

c) that any discrimination that was created by putting Interhandel on the American black list is removed, and that for both Interhandel and its Directors, big shareholders, and Directors of such shareholders, as far as these persons and firms have been listed on the black list because of their connections to Interhandel. The removal of any discrimination has to be realized in particular through [this word is supplied by the translator as it apparently seems to be omitted in the German text] the release of the blocked assets of these persons and firms in the U. S. in the sense of putting them on wholly equal terms with corresponding assets of Swiss Firms and persons which never were listed on the black list.

d) that the above-mentioned 80'000 shares of Interhandel are put at the Corporation's free disposal.

If the above conditions are fulfilled, Interhandel will transfer its participation in G. A. F. and all assets
3388 that might exist in the U. S. to the buyers.

The binding to the above promise is limited as to time as follows:

Until June 18, 1946, 9 a.m., the party interested in the purchase has to declare that it is willing to buy the stockholding of Interhandel in GAF under the conditions described here and that in this sense it will strive for the necessitated approval of the appropriate American government agencies.

After receiving such a declaration Interhandel holds itself bound to its declaration given orally on June 6, 1946 (concerning its ready willingness to accept a purchase offer for GAF under certain conditions and against a certain price) further until June 30, 1946. Within this further period the party interested in the purchase has to submit

to Interhandel a binding offer for carrying through this transaction on the basis set forth and based on the necessary license thereto.

If this binding declaration is not made within the period provided for, Interhandel will not hold itself bound any longer to its declaration of June 6, 1946.

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2085 Filed Oct 25 1949

DEFENDANTS-APPELLEES' MOTIONS.

Motion of Defendants for an Order Adjudging That Defendants and Plaintiff Are Entitled to Settle This Action Regardless of Any Right Which the Intervenor Has or Asserts to the Contrary.

The defendants, by their undersigned attorneys, respectfully move the court

1. For an order, under Section 17 of the Trading with the Enemy Act (U. S. Code, Title 50, Appendix, Section 17), under the Federal Declaratory Judgments Act (U. S. Code, Title 28, Sections 2201, 2202), and under Rule 57 of the Federal Rules of Civil Procedure, adjudging that defendants and the plaintiff are entitled to stipulate for the settlement and dismissal with prejudice of the cause of action herein asserted by plaintiff against defendants regardless of any right which the intervenor plaintiff has or asserts to the contrary.

2. For such other and further relief as is deemed just in the premises.

HAROLD I. BAYNTON
Deputy Director, Office of Alien Property
DAVID SCHWARTZ
Special Assistant to the Attorney General
Department of Justice,
Washington, D. C.
Attorneys for the Defendants

Washington, D. C.
October 24, 1949

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2122 Filed Dec 21 1949

Order.

Upon consideration of the motion of the defendants for an order adjudging that defendants and plaintiff are entitled to settle this action regardless of any right which the intervenor has or asserts to the contrary.

And upon consideration of the intervenor's opposition to the motion, and after hearing the parties and upon consideration of all the papers submitted herein, it is, by the Court, this 21st day of December, 1949,

ORDERED that the motion be and the same is hereby denied.

DAVID A PINE
Judge

Seen:

JOHN J. WILSON
Attorney for Plaintiff

DAVID SCHWARTZ
Attorney for Defendants

J. EDWARD BURROUGHS, JR.
Attorney for Intervenor

2123 **Memorandum Opinion of Judge David A. Pine.**

PINE, J: In this case The Remington-Rand Corporation, or Remington-Rand, Inc., a corporation, has been allowed to intervene. It claims that it is the owner of certain shares of stock of the G. A. F. corporation, which has been siezed by the defendant.

It also alleges that on April 22, 1947 it held an option made and granted to it by the plaintiff in Switzerland, under the terms whereof the plaintiff agreed to sell to, and agreed to accept an offer by the intervenor to purchase this stock, delivery to be made upon return of the stock to the plaintiff by the defendant, for the sum of 25 million dollars; that it was further agreed that plaintiff, at any time prior to the acceptance of the offer, could cancel the option by

failure of The Remington-Rand, Inc., to accept the offer within 14 days after the receipt of notice of cancellation; that on April 22 the plaintiff notified Remington-Rand of the termination of said option effective May 6, 1947, and on May 5, 1947, Remington-Rand notified the plaintiff that in accordance with the terms of the option it accepted the offer to sell the stock, and agreed to purchase the same at the stipulated purchase price, and that it is ready, able and willing to perform its option agreement, but that plaintiff has refused to recognize the same.

Intervenor prays that plaintiff be restrained from disposing of any right, title and interest in and to the
2124 stock, and that the intervenor be adjudged to be entitled to the stock.

The Government has filed a motion for an order adjudging that the defendants and the plaintiff are entitled to stipulate for the settlement of this action, with prejudice, of the cause of action herein asserted by the plaintiff against the defendants, regardless of any right which the intervenor-plaintiff has, or asserts, to the contrary.

As I view it, if the intervenor's claims are established it is entitled in equity to the stock. How, then, can this Court adjudge that the plaintiff and defendant are entitled to stipulate for a settlement and dismissal, with prejudice, of the cause of action, regardless of any right the intervenor may have, prior to a determination of his claim? In my view, to do so would be the taking of his property without due process of law.

Now, although the presence of the intervenor in this litigation may hamper, may delay, may even frustrate a settlement between the plaintiff and the defendants, I do not regard that intervenor's assertion of a claim to this property is in derogation of the principle of law which denounces contracts forbidding amicable settlement of lawsuits. If the intervenor is entitled to this property it is under no obligation to settle this lawsuit. If it isn't entitled to this property it has no right to interfere with

2125 the settlement, but until the rights of the parties can be determined I am of the view that the Court should not enter the declaratory judgment which is sought, that is to say, for judgment permitting a settlement to be effected between the plaintiff and the defendant, without regard to the rights of the intervenor.

Now, in the ordinary lawsuit, if the defendants took the position that they were mere stake-holders, they could turn the property into the registry of the court, or the court could appoint a receiver until the conflicting rights are adjusted, but that seems impossible under the law of this case.

I am also informed this morning that great damage may be done to this property if an early disposition is not made of this case. Indeed, I am told it is in the nature of being perishable, and I am in the dilemma of not being able to, as I see it, enforce what the plaintiff and defendants want to do without regard to the intervenor's rights, and at the same time protecting this property from deterioration or loss, or so interferring with the Government's program.

Now, the suggestion has been made, maybe not directly, but I got the suggestion the intervenor had filed something in the nature of a strike-suit. If that be true, great loss should not be sustained as a result thereof.

I, therefore, in addition to denying the motion, set this litigation between the intervenor and the plaintiff down for trial on January 30, 1950.

* * * * * * * * * *

2126 Filed Jan 4 1950

Defendants' Motion for Reconsideration of Defendants' Motion for Declaratory Relief.

Come now the defendants, by their undersigned attorneys, and move the Court for an order reopening and setting down for rehearing defendants' motion for an order adjudging that defendants and plaintiff are entitled to settle this action regardless of any right which the intervenor has or asserts to the contrary. Said motion for de-

claratory relief was denied by the Court, per Judge Pine, by an order signed December 21, 1949. An oral motion by the defendants for a reopening and rehearing was denied by the Court, without prejudice to the filing of a written motion, on December 30, 1949. The instant petition asks, therefore, as well, for reconsideration of the denial of December 30, 1949.

The grounds of this motion for a reopening and rehearing of defendants' motion for declaratory relief are that the Court has erred; that the errors in the reasoning of the Court, induced by the failure of counsel to explain the underlying relations of the parties, were not appreciated by counsel until towards the close of the second and final
2127 oral hearing and after a study of the oral opinion of the Court; that the decision of the Court very substantially impedes the accomplishment of objectives in the public interest, and that it is highly doubtful whether appellate review of the Court's decision can be had until the harm to the public interest has become irreparable.

It is believed that this motion is timely made under Rule 59(b) of the Federal Rules of Civil Procedure, in that defendants' oral motion for a rehearing was made on December 30, 1949 and the Court, denying the motion, did so without prejudice to the filing of a written motion. If our motion should not be timely under Rule 59(b), it is prayed that the Court entertain it under Rule 60(b), subdivision 1. The defendants inadvertently and excusably neglected to make this motion earlier because of the unsettling effect of the Court's decision on the relations of the parties and the intervention of the holiday season.

It is certified that this motion is filed in good faith and not for purposes of delay.

HAROLD I. BAYNTON
Acting Director, Office of Alien Property

DAVID SCHWARTZ
Special Assistant to the Attorney General
Attorneys for the Defendants
Office of Alien Property
Department of Justice
Washington 25, D. C.

January 4, 1950

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2141 Filed Jan 18 1950

Order.

Upon consideration of the motion of the defendants for reconsideration of defendants' motion for declaratory relief.

And upon consideration of the intervenor's opposition to the motion, and after hearing the parties and upon consideration of all the papers submitted herein, it is, by the Court, this 18th day of January, 1950,

ORDERED that the motion be and the same is hereby denied.

DAVID A PINE
Judge

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10739 and No. 10650

REMINGTON RAND INC., *Appellant* (10739), *Appellee* (10650)

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S.A. ETC. (I. G. CHEMIE) (INTERHANDEL), *Appellee* (10739), *Appellee* (10650)

and

J. HOWARD MCGRATH, Attorney General of the United States as Successor to the Alien Property Custodian, and GEORGIA NEESE CLARK, Treasurer of the United States, *Appellees* (10739), *Appellants* (10650)

Appeal from the United States District Court for the District of Columbia.

WILLIAM P. MACCRACKEN, JR.
1152 National Press Bldg.,
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URBAN A. LAVERY,
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Of Counsel:
HOMER CUMMINGS,
J. EDWARD BURROUGHS, JR.,
1625 K Street, N. W.,
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FRANK C. SIERCK,
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Washington, D. C.

STATEMENT OF QUESTIONS PRESENTED

1. Did Interhandel's offer to sell its General Aniline & Film Corporation vested stock for $25,000,000, on an if and when basis, expire without a valid acceptance by Remington Rand group within the meaning of the Interhandel offer?

2. Whether the if and when conditions specified by Interhandel in its offer were intended to be entirely performed after written acceptance but prior to delivery of vested stock against payment of the purchase price therefor in Switzerland?

3. Since Interhandel's offer was a "binding declaration" under Swiss law, was the "gentlemen's agreement" contention of Interhandel subsequently conceived, and therefore ineffectual?

4. Whether American Aniline & Chemical Co. was legally entitled to accept Interhandel's offer as a subsidiary of Remington Rand and as a member of the Remington "group"?

5. Three significant questions of evidence presented are whether the Court erred in excluding: (a) the Wehrli contemporaneous written memorandum of Interhandel's offer; (b) part of Archibald's deposition regarding conversations between the parties relative to the terms of that offer; and (c) in admitting Roger Whiteford's testimony of conversations with Mr. Rand not material to the real issues.

6. Two related questions are whether the alleged contract was illegal and unenforceable because: (a) it was in violation of the United States Trading With the Enemy Act; and (b) was in violation of the Swiss blocking regulations.

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SUPPLEMENT TO BRIEF.

TABLE OF CASES.

AUTHORITIES.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S.A. ETC. (I. G. CHEMIE) (INTERHANDEL), *Appellee* (10739), *Appellee* (10650)

and

J. HOWARD MCGRATH, Attorney General of the United States as Successor to the Alien Property Custodian, and GEORGIA NEESE CLARK, Treasurer of the United States, *Appellees* (10739), *Appellants* (10650)

Appeal from the United States District Court for the District of Columbia.

JURISDICTIONAL STATEMENT

This is an appeal taken by Remington Rand Inc., hereinafter referred to as RemRand, from a final judgment of the United States District Court for the District of Columbia, dismissing RemRand's amended Complaint of Intervention praying for a declaratory judgment under the provisions of the Federal Declaratory Judgment Act

(62 Stat. 964, 28 U.S.C.A. 2201, 2202) of its rights to purchase certain stock when it was returned by the appellee, J. Howard McGrath, to the appellee, Societe Internationale Pour Participations Industrielles Et Commerciales S.A., etc., hereinafter referred to as Interhandel. (App. 37.)

The District Court had jurisdiction under Sec. 9(a) of the Trading With The Enemy Act (40 Stat. 411, 50 U.S.C.A. App. Sec. 9(a)), and by Sec. 2201 of the Federal Declaratory Judgment Act, *supra,* and review of the judgment by this Court is authorized by Sec. 1921 of the Judicial Code (62 Stat. 929, 28 U.S.C.A. 1291).

The original action was brought by Interhandel against the individual appellees in Appeal No. 10739, the Attorney General and the Treasurer of the United States, hereinafter in this brief referred to as The Government, under Sec. 9(a) of the Trading With The Enemy Act, *supra,* in the United States District Court for the District of Columbia in October, 1948.

RemRand moved for and was granted the right to file a Complaint of Intervention. This Court denied a Writ of Prohibition by its Order of October 12, 1949. The Complaint of Intervention was filed October 18, 1949 (App. 2-5). Interhandel then filed a "Motion to dismiss the Complaint of Intervention and/or strike matter therefrom." This was denied and at the same time Intervenor's cause was severed and set down for trial, and the decision of the trial Court is the basis for Appeal No. 10739.

Interhandel's Answer was filed January 28, 1950 (App. 8-19) and the individual appellee's Answer January 24, 1950 (App. 20-24), which Answers were allowed to stand to the Amended Complaint of Intervention (App. 25-26), which Amended Complaint was filed April 17, 1950 (App. 5-8). The trial was commenced February 6, 1950, was concluded March 28, 1950, and the District Court entered judgment dismissing the Amended Complaint of Intervention on April 26, 1950 (App. 37-38). Notice of appeal in No. 10739 was filed June 23, 1950, and the record was filed in this Court on August 1, 1950.

The chronology of Appeal No. 10650 commences on October 25, 1949 (App. 393) when The Government filed a Motion for "an Order adjudging that defendants and plaintiff are entitled to settle this action regardless of any right which the Intervenor has or asserts to the contrary." The effect of this would be to cut off the rights of Intervenor without a hearing. This Motion was denied December 21, 1949 (App. 394). A Motion to reconsider this decision was filed January 4, 1950 (App. 396) which Motion was denied January 18, 1950 (App. 398). Notice of appeal was filed February 20, 1950, and a preliminary record in No. 10650 was docketed May 18, 1950, the complete record being filed in this Court June 9, 1950. RemRand, appellee in No. 10650, has moved to dismiss the appeal on the ground that it is taken from an interlocutory order which is non-appealable, which Motion is still pending before this Court.

STATEMENT OF CASE

RemRand is a Delaware Corporation. Interhandel is a Swiss Corporation, formerly known as I.G. Chemie. The controversy involved in this appeal is between RemRand and Interhandel.

In 1942, Interhandel, its directors, officers, large stockholders and affiliated companies were placed on the United States black-list. It then owned 455,648 common B shares and 2,050,000 common A shares in General Aniline & Film Corporation, a Delaware Corporation, hereinafter referred to as GAF. These shares, together with $2,000,000 in bank accounts, were first blocked and later vested. The Government acquired 80,000 shares of Interhandel stock in lieu of cash as dividends declared by GAF. Possession and control of said property is now in the Attorney General of the United States in conformance with certain Executive Orders. This property comprises the subject matter of the original action. RemRand's Amended Complaint prayed for a Declaratory Judgment that if the Court should find Interhandel is entitled to the return of its GAF stock, that

RemRand, by reason of its contract with Interhandel, was also entitled to such stock when certain conditions had been fulfilled.

The alleged contract of purchase by RemRand involved in this appeal is part of the aftermath resulting from World War II. When the shooting ceased, Interhandel was confronted with the problem of regaining its GAF stock, its other securities and funds held by the United States Government under the Trading With The Enemy Act. Our Government was and is determined that Interhandel's large holdings of GAF stock should be Americanized. GAF is a major factor in the chemical and photographic industries, both of which are important to our national economy and security.

These facts were brought to the attention of James H. Rand, President of RemRand, in the fall of 1945. After thoroughly investigating the situation Mr. Rand came to the conclusion that Interhandel was not a front for enemy interests and was therefore legally entitled to the return of its GAF stock. He also concurred in our Government's opinion that GAF should become Americanized. He further believed that the RemRand organization was a logical one through which this should be accomplished.

In May 1946 Interhandel's Board, after referring to "the American firm, Remington Rand Inc." (App. 334), resolved to announce their "readiness/willingness to sell the whole participation in the GAF to an American group." (App. 336). During the same month RemRand applied to the United States Treasury Department for a license to negotiate for the acqusition of this stock. (App. 319). On June 6, 1946, RemRand's agents in Switzerland received an Offer from Interhandel's directors in the form of an oral "binding declaration of their readiness/willingness" to sell their GAF stock to the RemRand group. It is conceded by Interhandel that under Swiss law this "binding declaration of readiness/willingness" constituted a legally binding commitment to sell for $25,000,000 upon the stipulated

terms. This "binding declaration" was made on an if and when basis and committed Interhandel to sell if its Offer was legally accepted by the American group, and when certain conditions had been fulfilled. (App. 336)

On June 14, 1946, RemRand received from the United States Treasury Department a license authorizing it to negotiate for the purchase of this GAF stock (App. 319), which fact was promptly brought to the attention of Interhandel. On December 23, 1946 RemRand was advised by the United States Treasury Department that it was free to make a contract for the GAF stock. (App. 321-322).

The time within which RemRand could submit its acceptance was extended by Interhandel, in writing, for short periods until May 6, 1947. Prior to that date, namely, on May 5, 1947, RemRand acting through its subsidiary, American Aniline & Chemical Corporation, hereinafter referred to as AA&CC, submitted its written Acceptance of Interhandel's Offer to sell the GAF stock in accordance with the terms set forth in Interhandel's "binding declaration".

Instead of standing by the terms of its "binding declaration" and acceding to RemRand's Acceptance, Interhandel, on May 7, 1947, merely acknowledged its receipt "without prejudice" (App. 330), and subsequently, on May 17, 1947, attempted to repudiate utterly its "binding declaration."

STATEMENT OF POINTS

1. The trial Court erred in finding and ruling, in effect, that Interhandel's Offer of June 6, 1946 required RemRand to secure:

(a) The return of the General Aniline & Film Corporation stock;

(b) The return of the Interhandel stock;

(c) The release of Interhandel's blocked bank account;

(d) The release of dividends paid on GAF stock; and

(e) The removal of all discriminations in the United States against Interhandel, its directors, principal stockholders and associated companies,

all prior to June 30, 1946. The Court erred in finding and ruling that RemRand must do these things prior to a valid Acceptance of Interhandel's Offer to sell its GAF stock for $25,000,000 cash. The fulfilment of all these conditions prior to acceptance was clearly not within the contemplation of either party, at the time the Offer was made.

2. The findings of the Court are clearly erroneous insofar as they are predicated on the use of the term "gentlemen's agreement". The injection of that phrase by Interhandel is an effort to transmute its "binding declaration" of June 6, 1946 into an unenforceable Offer.

3. The Court erred in finding and ruling that the Acceptance of AA&CC, on behalf of the "Remington group", was ineffective.

4. The Court erred in its ruling on three questions of evidence: (a) in excluding Wehrli's written memorandum made contemporaneously with Interhandel's Offer; (b) in excluding part of Archibald's Deposition regarding a conference with Interhandel's negotiators subsequent to the Offer; and (c) in admitting the testimony of Roger Whiteford as to conversations with James Rand on subjects not material to the issues.

5. The Court erred in finding and ruling that the Offer and Acceptance were invalid and unenforceable under the law of Switzerland because made in violation of the Swiss blocking decrees.

6. The Court erred in finding and ruling that the Offer and Acceptance were null and void, illegal and unenforceable under the United States Trading With The Enemy Act.

7. The findings of the trial Court in this case are not binding on this Reviewing Court.

SUMMARY OF ARGUMENT.

1. On June 6, 1946, Interhandel made a binding Offer to RemRand to sell its GAF stock for $25,000,000 cash payable in Switzerland provided its Offer was accepted on or before June 30, 1946. The acceptance of the Offer was to be "equipped" with certain conditions; namely, (a) The return of the GAF stock; (b) The return of the Interhandel stock; (c) The release of Interhandel's blocked bank account; (d) The release of dividends paid on GAF stock; and (e) The removal of all discriminations against Interhandel, its directors, principal stockholders and associated companies. If the conditions were fulfilled Interhandel was to transfer its participation in GAF and all assets that might exist in the United States to the buyers. It is inconceivable that anyone could have believed that these conditions could all be accomplished in a period of twenty-four days. Obviously, they were to be performed prior to settlement, but not prior to acceptance of the binding Offer.

2. The Binding Declaration of June 6 was made pursuant to formal action by Interhandel's Board of Directors. The time for the acceptance of the Offer was extended, by similar formal action, and while the Offer itself was never put in writing, Interhandel did give written notice pursuant to formal action by its Board of Directors of the final expiration date of the Offer. The fact that Interhandel representatives injected the term "gentlemen's agreement" some six months or more after the formal Offer was made does not put Interhandel in a position to maintain that any rights which RemRand acquired by accepting it, were unenforceable.

3. Not only prior to the making of the Offer, but also at the time it was made, and throughout the dealings between the parties, RemRand was frequently referred to by Interhandel as the "American group" or the "Remington group". For more than four months prior to the final expiration date of Interhandel's Offer it was fully aware that

AA&CC was a subsidiary of RemRand through which it intended to act either in accepting the Offer or in securing an option. Interhandel's repudiation of the "group idea" and of the action taken by AA&CC was not justified by the evidence and is contrary to the principles of Equity.

4. (A) The Wehrli memorandum should have been admitted under the past recollection recorded rule. It was the only written record of what transpired at the June 6 meeting and its accuracy was proven not only by Dr. Wehrli who made it, but in most respects, by Interhandel's own witnesses. (B) The answer which was stricken from Mr. Archibald's Deposition was responsive to the question put to him and the use of the word "agreed" did not preface a conclusion of the witness, but was, in effect, a statement of fact by the witness as to what occurred at the conference. (C) Mr. Whiteford's testimony should have been stricken from the record as its only purpose was to impeach the testimony of Mr. Rand given on cross-examination on an immaterial issue.

5. The testimony of Interhandel's own expert witness on Swiss law proved conclusively that an agreement to sell blocked assets if and when the Swiss blocking restrictions were lifted was valid and enforceable.

6. The letter from Mr. John S. Richards of the Treasury Department, dated December 23, 1946, clearly proves that the agreement between the parties was not in violation of the United States Trading with the Enemy Act.

7. The Findings of Fact of the trial Court are not binding upon this Reviewing Court because the evidence was largely documentary, part of the testimony was taken by deposition, and there was relatively slight conflict in the oral testimony before the trial Court on the material issues.

ARGUMENT.

INTRODUCTION TO THE ARGUMENT.

The Swiss Law as to the Interhandel Offer. Under Swiss Law, as the trial Court properly found (App. 35), an oral offer without consideration, made for a certain period of time, is legally "binding".[1] In other words, the well-known doctrine of *quid pro quo* in American Contract Law is not to be applied to the Offer of Interhandel of June 6, 1946—but rather the contrary Swiss Law. In Switzerland as in the Law of Contracts in America, the *objective conduct* of the parties at the time a bargain is struck should be the guide to the intent of the parties concerning that bargain. As the expert witness on Swiss Law, Dr. Jaeggi, testified, the Court must take "the totality of all the circumstances" into consideration, to know the "real intention" of the parties to such a negotiation as this. (App. 106)

Applying these two doctrines of Swiss Law to the facts of this case, it is conceded on all sides that the contacts between Interhandel on the one hand, and the "Remington Rand group" on the other culminated in the "Binding Declaration of Readiness/Willingness", on the part of Interhandel, which was orally made on June 6th of that year. (See, for example, Dr. Sturzenegger's testimony, App. 50 et seq.)

The American Analogy to this Swiss Concept of Contractual Relations. The Swiss concept of contractual relations between seller and buyer is, in some respects, different from that of the American System of Jurisprudence. In Switzerland when one party makes an offer to sell on certain terms, it is customary to phrase it as a "binding declaration of readiness/willingness" to accept an offer to purchase at

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[1] See the clear testimony on this point as to the "binding" effect of the June 6th Declaration, given at the trial below, by the Swiss lawyer, Professor Peter Jaeggi. (App. 106-7).

a certain price and upon certain terms. The offeree, instead of accepting the offer in so many words, on his part, offers to purchase at that same price and upon those same terms. When this occurs, the two *offers* automatically merge into a contract binding upon both parties. That is the Swiss concept, and the contract involved in this Appeal was couched in that language.

That contract also contained conditions which make it analogous to our contracts for the sale of real estate where the seller and purchaser agree on price and terms and then specify conditions (e.g. "good and marketable title") which are to be performed on an *if and when basis,* before or at the time of closing. It is also analogous to the form of underwriting agreements used in connection with the sale of securities which require registration with the Securities and Exchange Commission, before being offered to the public.

We suggest that it will assist this Reviewing Court if it will bear in mind these two analogies in considering this case.

The Authorizing Minutes of Interhandel.—In order to get at the gist of what was in the mind of Interhandel in making that Offer (which it characterized as a "binding declaration") it is necessary to study with care the inception of that offer in the Swiss Minutes of the two meetings on May 16 and 18, 1946, which are the written Corporate authority for the making of the June 6 Offer. (App. 334-336) The first formal, direct and extended consideration given by Interhandel to what it calls "the repeated contacts—with the American Firm Remington Rand", is fully disclosed in those May 16th Minutes. It there appears that "the first contact already took place in the first days of February 1946". This Reviewing Court will read these *first* Minutes with close attention since they are obviously a part of the *Res Gestae* of the negotiations between the parties. The thorough care with which this Swiss concern at that meeting studied and weighed and appraised this proposed

"solution of the problems" raised by the seizure of its highly valuable GAF stock by the American Alien Property Custodian cannot but be commended and admired. This set of Minutes makes perfectly clear how complex and difficult those Interhandel "problems" were at the time, *and how extremely anxious Interhandel was to reach "a basis of discussion" with RemRand which would lead to "the eventual sale" of the GAF stock.* Thus, these May 16th Minutes recite among other things:

> "After tedious discussions regarding the modalities of such a solution, the American group requested that we should notify our Readiness/Willingness to sell *in the sense of a binding offer of sale,* for a limited period of time * * * ." (Italics added)

"A Binding Offer of Sale"—The Key to this Case. Thus in Interhandel's own language, written down *on the eve of its oral offer,* there is found, we believe, the key to this case; since Interhandel calls its Offer "a binding offer of sale". (App. 335) Some months later, and after the American attorney for Interhandel, Mr. Wilson, had gotten to Switzerland in October 1946 and had reported "rather skeptically" to his Swiss clients, we find the first indication of a change of front on the part of Interhandel. In its Minutes for October 3, 1946 (App. 342) it appears that the Interhandel Board had been conferring with Mr. Wilson, and those Minutes recite:

> "Asked for his opinion regarding the chances of success of the Remington group with the American authorities, Mr. Wilson expresses himself rather skeptically".

The poisonous effects of Mr. Wilson's views are clearly and further disclosed in the Minutes of October 15, 1946 (App. 342) where the Interhandel Board, after again referring to "Mr. Wilson's visit" takes up for discussion the means by which the Offer to RemRand *"can be retracted".* (App. 342, italics added).

Whatever may have been the mental reservations of Interhandel, after Mr. Wilson arrived in Switzerland, the Board in their confidential Minutes of October 15th still recognized that the "Settlement" (sic) with RemRand was still binding and "valid" and "in force", except it might be withdrawn after fourteen days notice. These October 15, 1946 Minutes, after again referring to "Mr. Wilson's visit" go on to recite, in the rather stilted English translation (App. 342):

> "The Board of Directors represents the point of view that the settlement (sic), at present valid according to which our Declaration of Readiness/Willingness tacitly continues in force, and can only be retracted under observation of a period of notice of fourteen days, represents a solution which serves both parties very well. On our side there is no inducement to make use of stipulated right of retraction."

After the above parenthetical comment about Mr. Wilson and his activities in Europe, and about the Interhandel Minutes in October 1946, we come back once more to the records of Interhandel just preceding its oral Offer to Remington Rand, in June 1946.

The Official Written Terms Of The Interhandel Offer. The precise terms of the actual *oral* Offer of Interhandel are in dispute in this case, as to the wording and meaning of certain parts of it. That fact makes the official *written* terms of that Offer, as authorized by the Interhandel Minutes of May 18, 1946, take on the character of a document of primary importance on this Appeal. Moreover these particular Minutes give the Court a glimpse into the mind and purpose of the Interhandel Officials at the very time the Offer to the RemRand "group" was made. That glimpse will disclose, we contend (among other things) the European nature of this habitually reserved, cautious, obviously large, powerful, able and adroit International Swiss holding Corporation. In those May 18th Minutes, in short,

there is found a micro-picture of International Banking technique at its highest levels.

For the benefit of the Court we have set out as Exhibit A to this Brief, a summarized analysis of these crucial minutes, which authorized the Interhandel Offer of June 6, 1946. But at the same time we respectfully urge this Court to read for itself these confidential records (App. 334 to 337) which were made at the time. They contain admissions, both express and implied, which strongly tend to show the basic error of the trial Court in this case.

Some Comment on these Minutes. We shall argue strongly at other places in this Brief that these two sets of confidential Minutes, clearly show that at the time of the *inception* of Interhandel's Offer, three grounds of defense, successfully urged by Interhandel's Counsel in the trial Court, were simply not in the minds of either party. These grounds are:

1. The so-called "conditions precedent" defense.
2. The so-called "gentlemen's agreement" defense.
3. The defense that Interhandel's Offer to the "American Group" was restricted to Remington Rand alone.

We will discuss each of these defenses separately in this Brief. We now take up the Offer itself.

THE ORAL OFFER OF INTERHANDEL ANALYZED.

The Refusal To Put The Offer In Written, Unequivocal Terms. We have seen that Interhandel in the Minutes above discussed expressly authorized the making of a "Binding Offer of Sale" (App. 335) to RemRand, and directed Dr. Sturzenegger and Mr. Germann to say that the Swiss concern "would be prepared to accept a licensed offer of purchase"[2] from the "American interested parties", under the above conditions, etc. (App. 337).

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[2] No American Lawyer would talk (or think) in the language used in these Interhandel Minutes. (May 16, 1946, App. 335). To talk about an "offer of purchase" made as the acceptance of a "Binding Offer of Sale" is confusing

In view of the later rigid attitude of Interhandel on the point, *it is to be particularly noted that nothing in those Minutes required the Offer to be oral, and not in writing.* Every judge and every lawyer knows that an *oral* Offer, of such magnitude and complexity, was bound to raise questions of construction and interpretation, and further was bound to raise the question of why a written Offer was so rigidly refused. The answer to those questions seems to lie largely in the difference between the mental operations of the Continental business man on the one hand, and the American business man on the other hand, in such a situation. As a result of that difference in point of view between the Swiss and the American interests, RemRand constantly insisted that the Offer be put in writing so that its terms would be unequivocal; and Interhandel on the other hand, constantly refused to put the terms of its Offer in a form that would foreclose future dispute, and indeed the possibility of future hedging.

The June 6th Conference—Interhandel's "Binding Offer" Is Made. The next important event or step in the negotiations was the June 6, 1946 conference between the parties in the Interhandel offices in Basle. At that conference there were the four leading Officials of the Swiss concern and two representatives of the RemRand group.[3]

Dr. Sturzenegger (who was present at that meeting, and a Lawyer and Banker, who incidentally speaks excellent

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to the American legal mind. American Lawyers think (and speak) of a legal *Offer* and a legal *Acceptance* as the two acts of the parties which constitute a contract. We think that terminology should be applied by the Courts to the Case. Indeed the Trial Court in its Conclusions of Law (App. 36) did just that, and used the correct terminology in speaking of "the Offer made by Interhandel," as contrasted with the "Purported Acceptance" by the Remington Rand side. The Trial Court repeated that correct terminology several times.

[3] The evidence (App. 391) shows that those present were:

From Interhandel: "Dr. Felix Iselin, Mr. August Germann, Dr. Hans Sturzenegger and Mr. Walter Germann."

From the Rem-Rand group: "Mr. F. Richner and Dr. Ulrich Wehrli, from Union Bank of Switzerland."

English, as well as his native German) testified that there had been "several preliminary discussions", with the RemRand representatives. He said that the conference began when the representatives of RemRand "declared their attitude in the whole matter." (App. 50) It is important to note that at that important and crucial conference, he seems to have avoided taking with him even a short memorandum of the Interhandel Minutes, giving him and his associates their authority (App. 52)—an incident which in itself, we think, arouses some hint of suspicion.

At that time Interhandel was on the blacklist, not only in the United States and Switzerland, but also in England and France. (App. 49) Indeed, at the time of the June 6 conference and later, the Swiss group was fearful that if they did not get their price in cash in gold in *Switzerland,* "the United States Government would find some way to take the $25,000,000 away from them".[4] It is implicit in the confidential Minutes of Interhandel, both before and after the June 6 Offer, that Interhandel was most anxious and desirous to have that Offer quickly and definitely accepted by RemRand. That is a necessary conclusion from the fact that the confidential minutes authorizing the Offer (May 18, 1946, App. 336) and the specific terms of the oral Offer itself, (Dr. Sturzenegger's testimony, App. 61) both fixed June 30, 1946—a period of only 24 days—as the date when RemRand was first required to give the "binding declaration" of acceptance on its part. In other words *a speedy commitment on the part of the RemRand group* was of the utmost importance to Interhandel. They obviously knew and understood that RemRand could not possibly achieve the release of the GAF stock from the vesting order of the Ameri-

[4] See Dr. Sturzenegger's uncontroverted statement to Mr. Shorten of RemRand in Switzerland, in March 1947, (App. 119). See also the Doctor's own testimony about what he had in mind at the June 6 conference, when he said about the condition about the price to be the equivalent of "gold deposit—in Switzerland":

> "We were thinking of an absolute assurance that the price was to be really at our disposal in Switzerland." (App. 54).

can Alien Property Office in that 24-day period. *But they wanted to get a binding contract of purchase and sale, on an if and when basis.* That is the obvious meaning and purpose of the language used both in the Authorizing Minutes of Interhandel (App. 336) and in its oral Offer of June 6, 1946. The able Trial Court, we respectfully submit, erred in construing the evidence on this *if and when* phase of the June 6 Offer.

Summary Comment On The June 6 Offer. We conclude our discussion of this opening phase of these important negotiations (the Offer as contrasted to its Acceptance) with a short word of summary comment.

We do not for a moment impute any questionable motives to this Interhandel group in connection with this opening phase of their negotiations. On the contrary we know of the high repute for business ethics and integrity which the Swiss Banking fraternity holds throughout the world. We think the Court will conclude, as we freely say, that the motives of the Interhandel Officials were of the highest type, during the opening phase of these negotiations —as is shown both by their formal confidential Minutes, and by their face-to-face contacts with the RemRand representatives. It was only after they had gotten under the domination of their American Lawyers (several months after the Offer was made) and after they had come under the cumulative pressure of the strong and pushing American "Banking Syndicate" (to use Mr. Germann's words, R1505) that the Interhandel people underwent a change of front.

They had given their word however, and they kept it "loyally" (to use their own phrase as late as March 17, 1947, in their Minutes, App. 354) down to May, 1947. Indeed the very language of the Interhandel Notice (April 21, 1947, App. 325) "cancelling" the Offer of June 6, 1946, as of May 6, 1947, itself constitutes a written admission that there would still remain *a binding offer to sell,* down to the last mentioned date. The Offer had been made by

Interhandel in good faith, and with really high hopes and expectations. As late as March 17, 1947, Dr. Sturzenegger had said to Mr. Garey in Switzerland (App. 137):

> *"We are committed. We want Remington Rand committed."* (Italics added)

That, we say, is the true story of these dealings in a nutshell. By the force of the June 6, 1946 Offer, Interhandel was legally "committed" until it "canceled" that commitment. The able trial Court entirely failed to appraise properly these negotiations, and in that way committed reversible error.

POINT I.

THE UNTENABLE DEFENSE OF "CONDITIONS PRECEDENT".

Perhaps the most flagrant error of the able trial Court was its failure to see through and reject the untenable defense asserted in this case based on the idea of "conditions precedent." That defense of Interhandel to the Acceptance of the RemRand group was specifically approved and sustained by the trial Court in both its Findings of Fact (App. 35) and in its Conclusions of Law. (App. 36.)[5]

The "Conditions Precedent" Contention Another Complete After-thought. A careful reading of this entire record will convince any fair and unbiased reader, we believe, that this "conditions precedent" contention of Interhandel is a complete after-thought, which was only conjured up by its adroit lawyers, 12 days after it had received the two cables of Acceptance of May 5, 1947. To put the matter another way, this "conditions precedent" argument (for it is an argument rather than a fact) is entirely a *post litem motam*

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[5] In its Conclusion of Law 3 the trial Court specifically said (App. 36):

"3) The purported acceptance of the offer by AA&CC was ineffectual because (a) the conditions precedent had not been fulfilled. . . ."

In its Finding of Fact 6 the trial Court referred to the fact that when the two RemRand cables of Acceptance of May 5, 1947 were sent, "the other conditions described in paragraph 3 hereof had not been performed."

idea, which was first mentioned nearly two weeks after the controversy arose. There is no shadow of doubt about this charge of ours when the confidential Minutes of Interhandel are examined, and when the whole story about the invention of this "conditions precedent" contention is told and explained. And yet the trial Court in its Finding of Fact and Conclusions of Law above cited, nevertheless adopted and accepted *in toto,* this argumentative contention of Interhandel. In so doing the trial Court committed reversible error of a grievous kind, as we shall now try to demonstrate.

No Hint About "Conditions Precedent" In Interhandel Offer. It is entirely fair to say, we believe, that if this Swiss concern (dealing as it was with an American concern which transacted its business in another language) had intended that the laborious terms of the Offer of June 1946 were to be considered as "conditions precedent," *to mere acceptance of that Offer,* it would have expressly said so in the language of the Offer. "Conditions precedent" are not ordinarily read into a contract unless they are clearly expressed as such. Here a Swiss business concern, of high repute, but also a concern of the sharpest and most astute experience, makes a "Binding Declaration of Readiness/Willingness," involving the vast sum of $25,000,000, and does so with the utmost formality and solemnity, and with the most precise details. And yet there is not the slightest hint about this "conditions precedent" idea in the language used in that Offer.

And it must be remembered that it is a fundamental rule of Law and of Logic as well, that language used by a party will always be construed most strongly against him.[6]

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[6] This rule of construction against the party using words, is well stated in 17 C. J. S. Contracts, Sec. 324 where it is said:

> "Where a contract [or other writing] is ambiguous, it will be construed most strongly against the party preparing it or employing the words concerning which doubt arises, the reason for the rule being that a man is responsible for ambiguities in his own expressions."

See, Northern Pac. Ry. Co. v. Twohy Bros. Co., 95 F. 2d 220, 223 (C. C. A. 9), *cert. den.*, 304 U. S. 575, 82 L. Ed. 1539.

A Senseless Contention On Its Face. If we put ourselves back for a moment in the shoes of the respective parties at that June 1946 conference, it is at once clear that this "condition precedent" contention would have been branded then as senseless on its face—if anybody had been bold enough to raise it. The mere suggestion of such an idea would have been absolutely fatal to any further negotiations whatever; since the time-limit of the Offer (afterward expressly extended) was only 24 days away. Everybody knew, and accepted the prospect, that the carrying out and accomplishing the difficult terms of the Offer—particularly the release of the GAF stock from the American Alien Property Office—might take months upon months to achieve. No sensible business man in Switzerland at the time—and much less a sensible business man in America—would have wasted five minutes on such a "conditions precedent" proposition. We respectfully say that the trial Court should have taken judicial notice of such a matter of common knowledge, and should have branded this contention as absurd, since the Court itself was being imposed upon with such a defense.

Looking realistically at the circumstances at the time and place of the making of the Binding Offer, it is clear that it was intended to be sensibly capable of acceptance. That Binding Offer should not be interpreted in such a way as to make it utterly futile. The Courts will not tolerate the construction of the language in a formal proposal in such a fashion as to render it absurd and impossible of acceptance, when a reasonable and fair construction of it can be made, which is in accordance with the sense of the language used. Many cases may be cited for this fundamental doctrine of law. See *Kenyon* v. *Automatic Instrument Co.*, 160 F. 2d 878, 883 (C. C. A. 6); *Aronson* v. *K. Arakelian Inc.*, 154 F. 2d 231, 233 (C. C. A. 7); *Phillips Petroleum Co.* v. *Gable*, 128 F. 2d 943, 945 (C. C. A. 10).

It is for these *primer-stuff* reasons that we say that at the time this Swiss Offer was made there was not the slight-

est thought in the mind of either party that these burdensome terms were to be considered as "conditions precedent." Such an idea, we submit, was utterly senseless.

The Convicting Evidence of Interhandel's Minutes on this Point. The final convicting evidence against Interhandel's "conditions precedent" contention is found in the disclosures of their own confidential Minutes on the point. The record evidence in this case shows that *no reference whatever to that language, "conditions precedent" or anything like it,* will be found in the Interhandel Minutes from beginning to end of these protracted negotiations—that is *until after the controversy arose.* An examination of these Swiss minutes from May 16, 1946 (App. 334) clear through to May 13, 1947, inclusive (App. 359) shows no mention of, or even implied reference to, this "condition precedent" contention. On the contrary, it shows that Interhandel "would be prepared to accept a licensed offer of purchase * * * equipped with the above conditions." (App. 337) *The very first mention of this phrase* in a garbled form—it is called "main preceding conditions"—is to be found in the Interhandel Minutes of May 17, 1947. (App. 362) The same garbled version "main preceding conditions" also appears in Interhandel's "Radio-Swiss" cable to Mr. Rand personally of the same date May 17, 1947. (App. 309)

The Achilles Heel of the Interhandel Defense. These extended Minutes of May 17, 1947 of Interhandel are crucial in this case. Indeed they are so decisive that we think they may well be characterized as the Achilles Heel of the Interhandel defense in this regard. They constitute a fatal admission against interest of kind, so far as this "conditions precedent" defense is concerned. They prove beyond dispute that this contention was never raised until after the controversy arose.

Here then the cat is out of the bag, so far as this defense of "conditions precedent" is concerned. It is a gross violation of the *post litem motam* rule which excludes "cooked

up'' matters, that are clearly put together after the *lis* has arisen.[7] The discerning trial Court should never have permitted the phrase ''conditions precedent'' to be written into his Conclusions of Law on this case. Here again we say this grave error is more than enough to require a reversal of this important case.

POINT II.

THE "GENTLEMAN'S AGREEMENT" IDEA AS AN AFTER-THOUGHT AND A COMPLETE CHANGE OF FRONT.

The able trial Court in its Findings of Fact (App. 33-35) adopted seven separate references to this ''gentleman's agreement'' phrase, which appears repeatedly in the Answer of Interhandel to the Intervention Petition, and also appears repeatedly in the defense testimony. We propose to show this Reviewing Court, from the Interhandel's own Minutes, that this ''gentleman's agreement'' idea first appeared in its secret Minutes in January, 1947 (App. 348), more than six months after the Interhandel Offer had been made; and that this phrase never was within the purview of any negotiations of the parties prior to that date. It is, we assert, a complete afterthought and a complete change of front on the part of Interhandel. The use of this phrase by Interhandel is a subterfuge which owes its invention and inspiration to the improved bargaining position of this otherwise honorable and upright Swiss concern, which began about January 1947.

Interhandel's January, 1947, Minutes. In the confidential Minutes of Interhandel for January 16, 1947 (App. 347-49), we find, as we have said, the first mention of this phrase ''gentleman's agreement.'' It is also not without its adverse reflection on Interhandel, that these same Minutes in which that phrase appears for the first time, con-

[7] For this *post litem motam* rule see *Westfeldt* v. *Adams*, 121 N. C. 379, 42 S. E. 823, 826.

tain also the very first mention of powerful competing American concerns. Nor is it entirely without interest in this connection to note that Mr. Wilson's name appears four times in those confidential Minutes, when these two new facts appear for the first time.[8]

It is further to be particularly noted that while these January Minutes show that the Swiss concern had "expressly confirmed to Remington that we are still holding to the existing gentleman's agreement," they also disclose that as early as January, 1947 Mr. Walter Germann was already having "personal contact with the various gentlemen" representing these competing concerns. It may be that these two conflicting positions are within the concept of a "gentleman's agreement" as interpreted by Interhandel. But we call the Court's attention to the fact that three months later (Minutes of March 17, 1947, App. 354), RemRand was formally advised by letter:

> *"It is of importance to us to take this opportunity to confirm explicitly to you our loyalty to the Remington group."* (Italics added.)

We shall let the Court draw its own conclusions as to the business ethics here disclosed, without further argument.

A Possible Motive—The Enhancing Value of the GAF Stock. Always under such circumstances as those we have been discussing the Courts seek the human motive that may have impelled the controversial conduct of any party. We find that possible motive on the part of Interhandel for its obvious but secretive change of front in the fact that, be-

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[8] It is also interesting to note that these same Minutes of January, 1947, admit the really large amount of "work" which RemRand had already done in America on Interhandel's behalf, and the "favorable atmosphere for the proposed transaction with all (American) Departments" which RemRand had already created.

The five strong competing American firms mentioned in these Minutes are (App. 348-9):

1. "The Firm of Morgan"
2. "The Firm of A. G. Becker & Co."
3. "The United States Rubber Corp."
4. "The American Celanese Corp."
5. "The Pullman Corp."

ginning about January, 1947, there had been an apparent enhancement in the bargaining value of this GAF stock in the eyes not only of Interhandel but also the American competing concern.[9] By the spring of 1947 Interhandel had evidently come to the conclusion that it might drive a much better bargain than the $25,000,000 price it had bound itself to accept from RemRand.

The Real Reason for Injecting the Phrase "Gentlemen's Agreement". It is important to remember that the phrase "Gentlemen's Agreement"—as an alternative phrase for Interhandel's own term, "Binding Declaration of Readiness/Willingness"—was, as we have shown, a clear afterthought, which was first injected by Interhandel in its own confidential minutes in January, 1947. (App. 348) Indeed, Dr. Sturzenegger admitted at the trial that in these negotiations he personally first used the phrase "gentlemen's agreement." His testimony as to the time when he first used the phrase is clearly equivocal. (App. 62). On cross-examination he was unable to say that it was ever "specially mentioned" in Interhandel's oral discussions with the RemRand representatives. (App. 62).

It should be remembered that Dr. Sturzenegger was himself an astute Swiss lawyer, who had also studied Swiss "banking practice" before he became head of the private banking firm, H. Sturzenegger & Co., and later a Director of Interhandel. (App. 47).

It is obvious that by January, 1947 (when this phrase "gentlemen's agreement" was first used by Interhandel in its Minutes) this Swiss concern had a clear motive for *watering-down* the legal effect of its "Binding Declaration of Readiness," given by it in the previous June. The mo-

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[9] The fact of enhancement in value of GAF stock is clearly proved by Mr. Walter Germann's personal affidavit to the main Complaint of Interhandel in the suit below. In his affidavit to that Complaint made in October, 1948, Mr. Germann swore that at that time GAF stock held by the Alien Property Custodian "Has a value in excess of $100,000,000". Indeed the Government in this Intervention suit has admitted that this stock is presently worth from "$50,000,000 to $100,000,000." See the affidavit of the Assistant to the Attorney General, Mr. Schwartz, filed in the main suit, December 1949.

tive was that Interhandel wanted to lay the groundwork for possible future "cancellation" of that "Declaration." The conclusion is inevitable, we contend, that this change of language of Interhandel, *in the middle of the game* is a part of its attempted change of front.

Furthermore, Interhandel did not at any time, before this controversy arose, treat its "Binding Declaration" of June 6, 1946 as a "gentlemen's agreement," from which it could walk away at will, and without giving any notice. The notice of cancellation *per force* recognizes the existence of a *binding commitment* which is decidedly more than a *"gentlemen's agreement."* The two positions taken by Interhandel—that of a "binding commitment" and a "gentleman's agreement"—are absolutely inconsistent. Certainly Interhandel did not treat its Offer as something which had no legal effect, either at its inception in June, 1946 or at the time of its attempted "cancellation" ten months later.

POINT III.

THE REPUDIATION OF THE OFFER TO THE "REMINGTON RAND GROUP".

The Trial Court's Basic Error as to the "Group" Offer of Interhandel. The trial Court in its Conclusion of Law No. 3 (App. 36) held that RemRand's Acceptance of Interhandel's Offer, through its subsidiary AA&CC, "was of no effect". As a reason therefor the Court says, "the Offer was not made to American Aniline and Chemical Company". The fact is that the Minutes of Interhandel of May 18, 1946 (App. 336) authorizing the Swiss Offer uses the term *"an American group"*, as the prospective offeree; and that term shortly becomes either *"Remington Group"* or *"Remington Rand Group"*, and as such persists throughout the Interhandel Minutes.

Moreover, RemRand as early as January, 1947 had given Interhandel the written documents showing it had organ-

ized AA&CC, and proposed to effectuate the transaction through that subsidiary.[10] The record shows that no objection to that plan and method of Acceptance was ever made by Interhandel during the next four months—*and indeed not until May 17, 1947, and after the controversy arose* (App. 359 to 363).

Accordingly Interhandel is now clearly estopped from raising any objection to the Acceptance by AA&CC in this litigation. The trial Court should have so ruled. The Court's Conclusion of Law to the contrary therefore constitutes reversible error, as we shall now show.

The Facts as to the "Group" Offer of June 1946. Here again it will be helpful if we strive to put ourselves in the shoes of the Interhandel Officials and the RemRand representatives at that June, 1946 conference. It is to be noted that three of the four Interhandel Officials who were present, are trained and experienced lawyers—Dr. Iselin the President, Dr. Sturzenegger, a leading member of the Board of Directors, and Mr. Walter Germann, the Interhandel Manager.[11] These three Swiss lawyers certainly knew what they were doing when they made the Offer to the "American group", as they had been authorized to do by their Board of Directors. (App. 336.) Each of these three Swiss lawyers testified in this case for Interhandel, and their testimony shows that *they were not naive business men.* They cannot say that they used the word "group" loosely, or that they did not understand its purport and meaning, both in Swiss Law and in International affairs, as well as in the field of large scale corporate finance.

The evidence is clear therefore that the Offer of Interhandel to the "American group", later called the "Remington Rand Group", was never intended to be limited to

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10 See the Interhandel Minutes of January 16, 1947, reciting that on January 8, 1947, "at a joint meeting at Zurich" these documents, the proposed "Option Agreement" and "Power of Attorney" naming AA&CC as the subsidiary which would act, had been received and discussed. (App. 347)

11 See on this point the testimony of Dr. Sturzenegger. (R. 251 to 260).

RemRand alone; but might be accepted by it, through one of its subsidiaries. And the trial Court, as we have said, committed reversible error in holding to the contrary.

The Advance Knowledge of Interhandel About AA&CC. One of the most serious aspects of the trial Court's error on this point was its failure to give any attention or recognition to the evidence showing that Interhandel had advance notice of RemRand's plan to use its subsidiary AA&CC, as early as January 8, 1947.

Mr. Garey, testified at length about drafting the necessary papers for the AA&CC plan and about consulting with Mr. Wilson, the Interhandel Attorney, in that behalf. (R. 733). Mr. Garey proceeded to draft the so-called "Option Agreement" and the so-called "Power of Attorney". These documents were admitted in evidence without objection (App. 111) and are set out in the Record *in extenso*. (App. 379 to 390) Mr. Garey finished drafting these documents around the first of January, 1947, and submitted copies to Mr. Wilson at that time. (App. 111). These documents were promptly sent by RemRand to Interhandel in Switzerland and were received and discussed by them on January 8, 1947. In both of these documents the name of AA&CC appears in numerous places. (App. 347).

A reading of the Interhandel Minutes for January 16, 1947 (App. 347-349) shows that "the draft for the Option Contract" and "the draft for a joint Power of Attorney" were fully considered and discussed by the Swiss concern and its lawyers both on January 8 and January 16. Thus, early in January, 1947, Interhandel admits it had clear and definite advance knowledge of the plan whereby RemRand proposed to use its subsidiary AA&CC. No objection whatever was raised to the proposed plan, until after the Acceptance made on May 5, 1947, and *after the expiration of Interhandel's Offer.*

Mr. Garey and Mr. Shorten went to Switzerland to confer with Interhandel in late February 1947. They had drafts

of the "Option Agreement" and the "Power of Attorney" with them, which had previously been submitted to Mr. Wilson and to Interhandel. They met Dr. Sturzenegger and Mr. Walter Germann at the Interhandel Office March 10, and had a conference for three and a half hours. (App. 112) Mr. Garey told the Interhandel representatives (who were both able Swiss lawyers, it should be remembered) that he and Shorten "had been sent over for the purpose of bringing our relations with Interhandel to a head." And he pressed upon them that "Mr. Rand was unwilling longer to continue the situation unless Interhandel gave us a definite written option."

Again, at this March conference, we find Interhandel raising no objection whatever to the plan of having the subsidiary AA&CC make the Acceptance of the pending Offer. They discussed merely the *merits* of the "Option Agreement"; and again no objection was made to the fact that it ran to AA&CC. (App. 112-124) This March 10 conference was adjourned for a few days so that Dr. Sturzenegger and Mr. Germann could "consult with Mr. Wilson" in America.[12]

The conclusion therefore is unavoidable that the top Interhandel Officials in March, 1947, expressly approved and agreed to the plan of RemRand to accept the Swiss offer through its subsidiary AA&CC. There can be no question of the attitude of the Interhandel Officials in those grave and extended conferences in Switzerland in March, 1947, so far as AA&CC was concerned. Their own Minutes, at the time (as we have seen above) confirm explicitly their "loyalty to the Remington group." By so doing, they

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[12] Mr. Garey's uncontroverted testimony about his talk with Dr. Sturzenegger on this point is as follows (App. 124): "Before he could give the written option he would have to consult Mr. Wilson, and that until he had talked to Mr. Wilson he would not make any commitments with respect to the written option at all; that *at the time he had entered into the June 6th Agreement he had not advised Mr. Wilson of that, and his failure to do so had led to some misunderstanding in connection with Mr. Wilson,* and he didn't want that kind of a situation to occur again, and therefore he would want to talk to Mr. Wilson before he made any commitment in that respect to us." (Italics added)

clearly admit AA&CC into that "*group*". It was only when the *hindsight* of their lawyers began to work, and after the AA&CC Acceptance, that this "group" commitment of Interhandel was repudiated.

RemRand's Pledge of Resources to AA&CC. It should be remembered at this point, in discussing this "group" repudiation by Interhandel, that as late as April 21, 1947, the Swiss concern had said in its own Minutes (App. 355) in speaking directly of "the relationship with Remington Rand":

> "The *group* has particularly proved that it has access to important personalities in decisive Official positions." (Italics added)

These same Minutes recite that Interhandel has again given "the most serious consideration to the draft of the Option Agreement"—which specifically named AA&CC as the RemRand subsidiary to accept the Swiss Offer. It is implicit therefore that Interhandel fully understood that AA&CC had behind it the pledge of the resources of RemRand to the extent necessary to carry out the transaction.

The implicit expectation of high ethical business standards which existed on both sides in this $25,000,000 transaction, and the mutual high regard for each other's strong financial position are clearly borne out by the trial Court's own questions to Mr. Rand, and his replies. (R. 246 to 248). This important and uncontroverted testimony of Mr. Rand makes clear the following:

> That Mr. Rand, as President and Chairman of the Board was authorized by the Board of Directors to pledge the resources of Remington Rand to the extent of $25,000,000 to the American Aniline and Chemical Company. (R. 246)
>
> That Interhandel had been informed by the RemRand representatives in Switzerland of the formation of AA&CC as a subsidiary of Remington Rand. (R. 248)
>
> That because of that last mentioned fact, RemRand assumed that Interhandel knew that Remington Rand

> had pledged its resources behind AA&CC to the extent necessary to purchase the (GAF) stock. (R. 248)

In view of all these serious and extended conferences in Switzerland over the draft of the "Option Agreement" running directly to AA&CC (and not to RemRand itself), and in view of Mr. Rand's testimony of the pledge of RemRand's resources behind its subsidiary, it was preposterous for Interhandel's counsel to contend (App. 46) that "the assets and liabilities of AA&CC—were less than $10,000." Interhandel knew, and until after the controversy arose, never questioned the fact that the full resources of RemRand were behind its subsidiary in the proposed purchase of the GAF stock.

The Trial Court's Error On This Resources Point. In view of what we have shown above on this point of the pledge of all RemRand's resources behind its subsidiary AA&CC, it was utterly erroneous for the Trial Court to find (App. 34):

> "The assets of American Aniline and Chemical Company at that time" (its acceptance of May 5, 1947, of Interhandel's June, 1946, Offer) "were approximately $10,000."

Summary as to the Repudiation of Interhandel's Group Offer. We have shown from Interhandel's own records that from May 16, 1946 (when their Minutes begin on this point, App. 335) down to May 13, 1947 (App. 359) this Swiss concern admits it was dealing with "the Remington Rand group," and not with "Remington Rand Inc." alone. We have shown that the Offer of June, 1946 itself was expressly made to the "American Group which is interested." (App. 336). We have shown the extended discussions between the parties over the draft of the "Option Agreement" *running to AA&CC and not to RemRand.* We have shown that the entire resources of RemRand were behind its subsidiary AA&CC, *and that the Swiss concern*

knew that fact, and took no exception thereto. And finally we have shown that it was not until May 17, 1947—12 days after the AA&CC Acceptance—that the Interhandel Officials for the first time raised their contention that the Offer *"was strictly personal"* (App. 14 and App. 362), and could only be accepted by RemRand Inc., *itself.*

In view of this record we say reluctantly that the Interhandel Officials have put themselves in a bad light in a Court of Equity by their repudiation of their "group" Offer. Equity dislikes and frowns upon duplicity and double-talk, particularly in matters of high importance like the transactions here involved. We earnestly urge upon this Reviewing Court that the trial Court's Finding of Fact as to the "assets" of AA&CC (App. 34) was plainly erroneous. It is also apparent that the trial Court's Conclusion of Law that: "The purported acceptance of the offer by American Aniline and Chemical Company was ineffectual • • • because the offer was not made to American Aniline and Chemical Company" (App. 36) was likewise plainly erroneous.

The trial Court should have found that Interhandel never at any time objected to AA&CC as the subsidiary of RemRand which would act for it—until after the acceptance was given. The Court should have found and held that Interhandel had the duty to object to the AA&CC plan before the deadline of May 6, 1947—if it was going to object at all on that ground.

SUMMARY OF ARGUMENT ON THESE THREE DEFENSES.

So far, our argument has been directed to showing the shifting tactics used by Interhandel to bolster its three main defenses, namely,

A. The afterthought concerning "conditions precedent".
B. The afterthought concerning "gentlemen's agreement".
C. The repudiation of the "group" Offer.

Each of these defenses, we charge, represents a shifting of position and a change of front by Interhandel. It was only toward the end of its dealings with RemRand, and particularly after two outside influences had interjected themselves, that this Swiss concern adopted an equivocal attitude on their part. Those two outside influences were:

> *First,* the domination of Interhandel by their American Counsel, who, by their testimony, have shown such a bitter and envious attitude toward RemRand and particularly towards its President.
>
> *Second,* the temptation of a richer reward which other strong American interests began to dangle before this Swiss concern.

Equity Will Look Behind the Superficiality of These Defenses. Sensible men are entitled to draw sensible conclusions about this change of front and change of position, on the part of Interhandel. Indeed that is the true province of equity in such a case as this.

For the convenience of this Court, a table is set out at the end of this Brief as Exhibit B, revealing the secret changes of terminology and the shifting positions of Interhandel as shown by its own records; summarized as follows:

> A. The "gentlemen's agreement" phrase first appears on January 16, 1947.
>
> B. The "conditions precedent" idea first appears on May 17, 1947.
>
> C. The repudiation of the "group" Offer was first attempted on May 17, 1947.

The shifting conduct of Interhandel, we say, casts a cloud over the entire defense in this case. Each of the above defenses therefore should be rejected by this Reviewing Court. Also we say that a Court in such a case as this is deeply concerned with the motives of the parties. When the whole record here is reviewed, there is raised a conviction that the motive of Interhandel's change of position and change of front was tainted with averice and greed.

That motive, we say, is well expressed by the famous rhyme:

"When the Devil was sick,
"The Devil a Saint would be;
"But when the Devil got well,
"The Devil a Saint was he."

POINT IV.

QUESTIONS OF EVIDENCE.

Specific Questions of Evidence Discussed. We propose to discuss particularly the following three important rulings on evidence at the trial:

A. The Court's error in excluding the Wehrli Memorandum.
B. The Court's error in excluding an essential part of the Archibald Deposition.
C. The Court's error in admitting the Whiteford testimony.

A. The Erroneous Exclusion of the Wehrli Memorandum.

A Serious and Crucial Error. One of the most serious errors of the trial Court, we believe, and one of its most crucial errors, so far as RemRand is concerned, was the exclusion of the so-called Wehrli Memorandum. That document was actually the only contemporaneous written Memorandum of the "Binding Declaration of Readiness/Willingness", which had been so solemnly made in oral fashion by Interhandel, June 6, 1946. That document appears in this Record as Intervenor's Exhibit 55 for identification. (App. 391, 393). The crucial nature of that Memorandum in this case grows out of the fact that Mr. Wehrli was the only one of the six persons present (four for Interhandel and two for RemRand) who took the precaution to write out and set down in detailed fashion a complete statement of the Interhandel oral Offer, as originally made by its officials, in compliance with their *written authority,* from the Board of

Directors. It should be noted that whereas, the Board of Directors at its meeting of May 18, 1946, had specifically put *in writing* the details of the terms and conditions of its Offer to RemRand (App. 336, 337), the Interhandel Officials nevertheless refused to make any written record of their oral Offer, either at that time or thereafter.

Mr. Wehrli, it will be remembered, was one of the two high Officials of the Union Bank of Switzerland, who at that June conference had represented RemRand, the other being Mr. Richner, Mr. Wehrli's superior. Mr. Wehrli testified that it was usual and customary for him in his capacity as an officer of the Bank to make a recorded memorandum of such an important conference, and that in this case he had the specific order of Mr. Richner to do that, and Mr. Richner confirmed him as to this latter point. Mr. Wehrli further said:

> "I wanted to be precisely sure what was said on that date, in order to communicate it to the Remington Rand group." (App. 154)

Mr. Wehrli further testified that he had written out a longhand draft of the statement from his notes made at this time, and that from that longhand memorandum, he had immediately dictated the Memorandum in question. The original of this Wehrli Memorandum in German was produced from the files of the Union Bank of Switzerland and was before the trial Court, where it was identified as Intervenor's Exhibit 25. (R. 296). An agreed English translation of Wehrli's German Memorandum was also before the trial Court as Intervenor's Exhibit 55 for identification. (App. 391, 393). It is this latter document which the trial Court finally refused to admit into evidence, recognizing the closeness of its ruling when it said:

> "I am of the view that notwithstanding the present tendency to liberalize the rules of evidence—with which I am in accord—that this particular Exhibit is not admissible. I therefore sustain the objection." (R. 1035)

A Visual Picture of the Wehrli Memorandum. Before discussing the authorities supporting the admissibility of the Wehrli Memorandum, we proposed to show that it was actually acceded to and agreed to by the Interhandel witnesses at the trial, and was admitted to be a true and correct recital of the details of Interhandel's "Declaration of Readiness/Willingness", with two exceptions. Those two exceptions were, *first,* the use of two words ("made under" as against "equipped with") in one of the early paragraphs of the Memorandum, and, *second,* the use of some of the language in a short sentence toward the end of the Memorandum. We believe that this Reviewing Court will wish to have what may be called a visual picture of this Wehrli Memorandum, showing on the one hand, the very large parts of it which were admitted to be correct by the Interhandel Officials, and showing on the other hand, the lesser parts of it to which they took rather argumentative exception. For this purpose we have set out this Wehrli Memorandum as Exhibit C to this Brief and have there printed in usual type the extended parts of it to which Interhandel made no exception, and by way of contrast have put in italics the two parts of it which are not agreed to and accepted by Interhandel.

The Wehrli Memorandum and the Past Recollection Recorded Rule. Dr. Ulrich Wehrli testified in detail regarding the manner in which the memorandum, Intervenor's Exhibit 55 for identification, (App. 391-393) was prepared by him, and the time and manner of its preparation. His testimony showed that it was a memorandum made in the regular course of business pursuant to instructions from his superior shortly after the conversations took place which were recorded in it. Wehrli made the memorandum while the subject of it was fresh in his memory and he testified that it was precisely accurate. He further testified that at the time of taking of his Deposition he could not recall the details of the conversation though he did recall that such a conversation had taken place and the general subject of it.

(App. 149, 150, 154). We maintain that this memorandum should have been admitted in evidence as a past recollection recorded. Wigmore states the Past Recollection Recorded Rule as follows:

> "* * * we have to provide, in using a record of past recollection, for certain practical tests of *accuracy* and *identity* of the record; furthermore, we must require some guarantee that the past recollection thus recorded was a *satisfactory one*, eg. that it was recorded at or about the time of the events." 3 *Wigmore on Evidence* (3d ed. 1940) Sec. 734.

There can be no question but that Dr. Wehrli's testimony met all of these requirements. He further stated that the notes from which he dictated the memorandum had been destroyed. (App. 151).

The trial Court, as we have already indicated, conceded that "the present tendency (is) to liberalize the rules of Evidence" with regard to admitting such a contemporaneously recorded memorandum as that made by Mr. Wehrli of the Interhandel Offer. But the trial Court, we believe, violated that *liberal* rule by excluding the document. What the trial Court called "the present liberal tendency" of the Courts is well expressed by Justice Lehman of the Court of Appeals of New York when he said in *People* v. *Weinberger*, 239 N. Y. 307, 146 N. E. 434, 435:

> "There are times when the record of a past recollection if it exists is more trustworthy and desirable than a present recollection of greater or less vividness. * * * The rule of evidence should not become a fetish * * *".

The "fetish" which the old rigid rule of exclusion really exemplified cannot be better illustrated than by what the trial Court did in excluding this *very important* document in this case.

A few Leading Cases and Authorities. In this Brief we can only give a few further leading cases and authorities

with respect to the admissibility of this Wehrli Memorandum. In the case of *Insurance Co.* v. *Weide,* 81 U. S. 375, 20 L. Ed. 894, the Supreme Court first recognized and indeed foretold what is now called the *modern liberal rule* concerning the admissibility of such documents as that here in question. In that case the Court approved the admission below of a memorandum consisting of writing in a new ledger which the witness testified he had made from a previous ledger, and in so doing the Court said, speaking through Mr. Justice Strong:

> "How far papers not evidence *per se,* but proved to have been true statements of fact, at the time they were made, are admissible in connection with the testimony of the witness who made them, has been a frequent subject of inquiry, and it has many times been decided that they are to be received. And why should they not be? Quantities and values are retained in the memory with great difficulty. If at the time when * * * made, the witness knew it was correct, it is hard to see why it is not at least as reliable as the memory of the witness." [13]

That language has a clear pertinency to this Wehrli Memorandum. The fact is the trial Court admitted at great length the oral testimony of Dr. Sturzenegger and Dr. Iselin and Mr. Germann, where the witness was testifying from memory only about oral statements made nearly four years before the time the witnesses were testifying. That being so, how can it be sensible or logical to exclude this Wehrli Memorandum made contemporaneously with the June, 1946, conference?

In the recent case of *Thomes* v. *Atkins,* 52 F. Supp. 405, 411, 412 (D. C. Minn.) in a suit against a stockbroker, the Court admitted in evidence a letter written by a witness about the time of the transaction involved. The Court called the letter "a contemporaneous memorandum" and went on to characterize the letter as an instance of "'*past*

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[13] It should be stated that in *Dunlop* v. *Hopkins,* 95 Fed. 231 (C. C. A. 7), the Court followed and quoted the rule as above announced by the Supreme Court and said:

"The rule and the reason for it are well stated by Mr. Justice Strong."

recollection recorded' to be received in evidence as one of the many exceptions to the hearsay rule."

This recent Minnesota case cites a number of cases and authorities including the Wigmore quotation, and along with these citations, there are many other authorities which strongly support our contention that this Wehrli Memorandum fits the formula of a Past Recollection Recorded, and the trial Court erred in its refusal to admit it as such.

THE EXCLUSION OF PART OF ARCHIBALD'S DEPOSITION.

B. Exclusion of Archibald's Testimony. The testimony of Roy M. Archibald was taken on behalf of RemRand by deposition in Paris, France. The witness had represented RemRand at certain of the conferences which followed the Interhandel Offer of June 6, 1946. His testimony is extremely relevant and pertinent thereto. One particular answer was objected to and stricken on the ground that it was not responsive and was the conclusion of the witness. The witness had testified to conversations which took place at a meeting on July 19, 1946, with Dr. Sturzenegger and Mr. Germann, representatives of Interhandel. The question was:

> "RDQ. You pointed out to them, • • • What, Mr. Archibald?" (R. 870)
>
> A. "That we could not within the time limit set out in the Declaration carry out all the conditions stipulated, and they agreed with us that all that we had to do within the time limit was to bind ourselves to carry out these conditions at a future date." (App. 142)

At this point in reading the Deposition into evidence, Counsel for Interhandel moved to strike the answer as a conclusion on the part of the witness. After argument, the Court granted the motion to strike on the grounds that it was not responsive and was a conclusion. (App. 142)

A major issue of this case is the time for performance of the conditions specified in Interhandel's Offer, and all of the testimony bearing on this question was relevant and material and should have been admitted, unless clearly contrary to the rules of evidence. In giving his recollection of this conversation Mr. Archibald used natural and colloquial expressions, such as: "We discussed," "They stated," "We pointed out that," "They agreed with us that," The Court erroneously singled out the word "agreed" and excluded the phrase following, "that all we had to do within the time limit was to bind ourselves to carry out these conditions at a future date."

The use of the word "agreed" was held by the Court not to be objectionable as a conclusion in the case of *Woodworth* v. *Thompson,* 44 Neb. 311, 62 N. W. 450, 451, where in response to a question regarding conversations about building repairs, the witness said: "This he agreed to do • • •." The Court said that this was not a conclusion but merely the equivalent of a statement that A assented to B's proposition. Likewise, the language, "He agreed to buy • • •," was held not an indication of a conclusion, and further that substance or effect of oral utterances recalled is all that is required. See also, *Hudson* v. *McGraw-Bearly Lumber Co.,* 169 Okla. 160, 36 P. 2d 512, 513; *Collier* v. *Commonwealth,* 303 Ky. 670, 198 S. W. 2d 974, 975.

The meaning of words can only be judged by the particular context in which they are found. We submit that Mr. Archibald was here describing his recollection of what was said by the parties in his presence at the time the conversation took place. Thus he was in possession of facts which he should have been permitted to place before the Court.

There is little need to point out the fine line that exists between an expression of opinion and a statement of a fact. The evil of the distinction arises when the distinction becomes an "aim in itself and a self-justifying dogma." 7 *Wigmore on Evidence* (3d ed., 1940) Sec. 1919.

The purpose of excluding evidence which is termed "Opinion" is to prevent a witness from encumbering his factual testimony when such facts are before the Court and an expression of inference by the witness adds nothing to the materials upon which the Court must decide a disputed question of fact. *7 Wigmore on Evidence* (3d ed., 1940) Sec. 1918.

In the case at bar, the recitation of Mr. Archibald flows reasonably in terms of common use of communicative language. The question before the Court is basically what did Interhandel intend by its Offer, and the facts recited by Mr. Archibald are material aids in the determination of that question and as such should have been admitted into evidence.

Today, following the critical observation of Mr. Justice Sutherland that:

> "The fundamental basis upon which all rules of evidence must rest—if they are to rest upon reason—is their adaptation to the successful development of the truth." *Funk* v. *United States,* 290 U. S. 371, 381, 78 L. Ed. 369, 375.

the Courts are rejecting impractical quibbling in the recognition of the importance of ascertaining the truth. *First National Bank* v. *Robinson,* 93 Kan. 464, 144 Pac. 1019, 1020; see also, 20 *Am. Jur. Evidence,* Sec. 769.

The reporters of the American Law Institute make the following relevant comment in their Model Code of Evidence as a reason for their proposed liberalization of the rigid rule excluding opinion evidence:

> "When a witness is attempting to communicate the impressions made upon his senses by what he has perceived, any attempt to distinguish between so-called fact and opinion is likely to result in profitless quibbling. Analytically no such distinction is possible." *American Law Institute, Model Code of Evidence* (1942) comment, rule 401, p. 199, 200.

We submit, that here, the lower Court emphasized the use of the word "agreed" without thought as to the context of the immediately preceding testimony. It disregarded the personal knowledge whereof the witness spoke, and in so doing erroneously excluded this evidence which goes directly to a key issue; therefore, the decision of the lower Court should be reversed.

The additional ground assigned by the Court for granting this motion to strike was that the answer was not responsive to the question. There is absolutely no merit to this holding on that ground, for the questions were specifically directed to the conversation held on July 19, 1946, and the response was germane to the question in that it is a statement of what Archibald recalled the representatives of Interhandel said at that time. Any contention to the contrary must be based on the "quibbling" hereinbefore referred to and should not be taken seriously in an endeavor to ascertain the true facts of the case.

Furthermore, the short answer to this ruling is that no such objection was made at the time this Deposition was taken. Hence, by Rule 32(c) (2) of the Federal Rules of Civil Procedure (28 U. S. C. A., Fed. Rules Civ. Proc.), the objection was waived.

For these reasons, the lower Court erred in excluding this vital piece of testimony.

C. The Trial Court Erred in Admitting the Testimony of Mr. Roger Whiteford, Interhandel's Attorney.

Its Purpose—Attempted Impeachment of Mr. Rand. Mr. Roger Whiteford who admitted (App. 273) that he and Mr. John J. Wilson represented Interhandel in its main action against the Government, was called as a witness on behalf of Interhandel solely to testify about a conversation he had with Mr. James H. Rand in February, 1947. This conversation was first referred to when Interhandel's counsel cross-examined Mr. Rand. The questions on this part of his cross-examination referred solely to the attitude of

some of our Government officials toward RemRand acquiring the GAF stock. This certainly was not a material issue in this intervention proceeding. Mr. Whiteford's testimony was admitted over objection that it was immaterial and incompetent (App. 274) and subsequently a motion to strike his testimony was overruled. (R. 1621).

While the only possible purpose of Mr. Whiteford's testimony was the attempted impeachment of Mr. Rand's version of their conversation given on cross-examination, he did not confine himself to a mere contradiction but was permitted to vilify, slander and defame Mr. Rand. The vituperative and undignified epithets which he put into the record were highly improper. Their only purpose was to smear RemRand and its President. The refusal of the trial Court to strike this testimony, we submit, constituted prejudicial error. It is well settled that a witness may not be impeached by immaterial or irrelevant utterances which are concerned only with collateral matters. *Crocker First Federal Trust Co.* v. *United States,* 38 F. 2d 545 (C. C. A. 9); *United States* v. *Hannon,* 105 F. 2d 390 (C. C. A. 3); 58 *Am. Jur.,* Witnesses, Sec. 767.

Before leaving this subject, there is an unpleasant duty which we feel must be performed, namely, calling this Court's attention to Sec. 19 of the Canons of Ethics of the American Bar Association which concludes with this statement:

> "Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client."

We would also direct the Court's attention to the opinion by Judge Parker in *Alexander* v. *Watson,* 128 F. 2d 627 (C. C. A. 4).

While Mr. Whiteford only appeared as a witness in the trial of the Intervenor's Petition, Mr. Wilson appeared with the other counsel for Interhandel throughout the entire proceeding and is appearing in its behalf in this Court. Mr. John Carmody, another member of the firm, represented

Interhandel when the Depositions were taken in Paris during the course of the trial and after Mr. Rand's cross-examination.

POINT V.

THE VALIDITY OF THE OFFER AND ACCEPTANCE UNDER SWISS BLOCKING REGULATIONS.

According to the specific testimony of Interhandel's own expert, the Swiss blocking regulations (App. 377) did not prohibit the making of a contract to dispose of blocked property where the actual transfer of the property was only to be made if and when the Swiss blocking was lifted. (App. 212-214) Such a contract to be performed *in futuro* was and is clearly legal and enforceable under Swiss law. *And, the undisputed testimony shows that the agreement here in question was precisely such a contract, since the property was to be transferred only if and when both the Swiss and American blocking restrictions were lifted.* Accordingly, finding of Fact No. 9 which finds the agreement was "illegal under Swiss law" (App. 35, 36) and Conclusion of Law No. 4 (App. 36) are contrary to the undisputed evidence and therefore clearly erroneous.

Removal of All Blocking Restrictions. The trial Court in its Finding of Fact No. 3 stated that the sale of the stock was dependent, *inter alia,* upon the removal of "all discrimination in the United States against Interhandel." (App. 32) In accordance with the undisputed testimony the Court should have found that the parties dealt with each other solely on the basis that the Swiss as well as the American blocking restrictions had to be removed *prior to the actual transfer* of the property in question.

There is absolutely no conflict in the testimony concerning the fact that the removal of the blocking and other restrictions was a prerequisite to the transfer of the GAF stock to RemRand. Both the written and oral testimony clearly demonstrate that the terms of the Offer concerning the removal of the restrictions imposed upon Interhandel

was all inclusive, and was not in any manner limited to the restrictions in the United States. Thus, the Interhandel Director's Minutes of May 18, 1946 (App. 336) referred specifically to "cancellation of the discrimination against Interhandel" and no language was used indicating a limitation to United States restrictions alone. The written Recapitulation of the Offer made on July 23, 1946 (App. 373), which was admitted in evidence again refers specifically to the removal of "all discrimination against Interhandel", and does not limit the removal to the discrimination existing in the United States. The testimony of the witnesses of Interhandel who dealt with this question was uniform that *all discrimination against Interhandel* would have to cease before the GAF shares would be transferred. (App. 51, 218, 220, 257.) No witness limited the removal of restrictions to the restrictions in effect in the United States.

The simple fact, conclusively demonstrated by the testimony of Interhandel's own witnesses, is that both parties clearly understood that the Swiss "provisional blocking" of Interhandel was merely an appendage of the American blocking—a consequence flowing solely from the American blocking and having no real independent existence. Interhandel's President, Dr. Iselin, specifically stated in his testimony that the Swiss "provisional blocking" of Interhandel only came about as a result of pressure by the American Government and that upon the lifting of the United States blocking restrictions the removal of the Swiss "provisional blocking" would follow automatically. (App. 268, 271.) The parties naturally were primarily concerned with the United States restrictions since they were regarded as the key to the whole problem. But whenever they talked about the removal of the discrimination they were necessarily talking also about the Swiss restrictions, which were plainly and simply an extension of the United States restrictions.

It cannot, therefore, possibly be said that the parties made no provision about the lifting of the Swiss "provisional blocking", as the trial Court in effect held. To the

contrary, it was at all times clearly understood and agreed by the parties that there could not and would not be an actual transfer of property until both United States and Swiss restrictions were removed.

Contract Validity. The expert legal witness for Interhandel, Dr. Edmund Wehrli, testified in answer to the trial Judge (App. 213-214), that a contract by a concern that is blocked under Swiss Blocking Decrees to sell and transfer assets *if* and *when* the Swiss blocking restrictions were lifted would be *valid under Swiss law.* He testified unequivocally that if the transfer of the GAF shares was conditioned upon the removal of the Swiss blocking controls, the agreement was legal and enforceable under Swiss law.

The contract here in question called for the sale and transfer of the GAF shares if and when the blocking restrictions were lifted both in the United States and Switzerland. That fact is demonstrated by the undisputed testimony of Interhandel's own witness. Being conditioned upon the lifting of the Swiss blocking restrictions, the Agreement was valid under Swiss law. Accordingly, the Finding of the trial Court to the contrary cannot be sustained and should be reversed.

POINT VI.

THE VALIDITY OF THE OFFER AND ACCEPTANCE UNDER THE TRADING WITH THE ENEMY ACT.

The trial Court found that no license or authorization pursuant to the Trading With The Enemy Act had ever been issued to RemRand by any official of the United States and that consequently the contract between Interhandel and RemRand was null, void and unenforceable in the Courts of the United States. (App. 35-36.) This finding and conclusion are clearly erroneous and must be reversed.

The evidence is clear and explicit that the action of RemRand on May 5, 1947, in accepting the Offer of Interhandel was licensed and authorized by the Secretary of the Treas-

ury pursuant to Section 5 (b) of the Trading With the Enemy Act (55 Stat. 839; 50 U. S. C. A. App. 5(b)) and Executive Order No. 8389 as amended, (6 F. R. 2897 as amended. Supp. to Brief, pp. 62-67) issued thereunder. Under Executive Order No. 8389, as amended, certain transactions specified in Section 1 of the Order were prohibited, "except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses or otherwise." The Executive Order provided that "the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final."

On October 16, 1946, RemRand filed an application with the Treasury Department for a license authorizing it to acquire an option from Interhandel covering whatever interest Interhandel had in the GAF shares vested by the Alien Property Custodian. This application was considered by the Treasury Department in consultation with the Department of Justice as the successor to the Alien Property Custodian. (App. 299-304.) While the application was pending the Treasury Department on November 30, 1946 included Switzerland in General License No. 94. (11 F. R. 13959; Supp. to Brief p. 71.) The effect of this action was to license and authorize all transactions with Switzerland and its nationals unless the transactions involved property in the United States which was blocked on November 30, 1946. The inclusion of Switzerland in the General License removed all controls over current transactions with persons in Switzerland, thus making it possible for Americans to freely enter into contracts with persons in Switzerland, as long as the contract did not involve blocked property in the United States.

Thereafter, on December 23, 1946, the Secretary of the Treasury, through the Acting Director of the Division of Foreign Funds Control, formally notified RemRand that in view of Switzerland having been included in General License No. 94, and in view of the provisions of General Ruling No. 19, (10 F. R. 14775; Supp. to Brief, p. 70) un-

der which interests in property vested by the Alien Property Custodian are no longer regarded as blocked property in the United States, no further Treasury license was required to enable RemRand to contract with Interhandel concerning the GAF shares. This letter was of a two fold character. By its terms it was an authorization by the Treasury Department and it also was a ruling that the proposed transactions could be effected under an existing General License. (App. 321, 322.) Thereafter, on May 5, 1947, RemRand accepted the Offer of Interhandel which otherwise would have expired at 11:59 PM on May 6, 1947.

Accordingly, the contract thus made with Interhandel, if it required a license pursuant to the Trading With the Enemy Act, was licensed and authorized by the Secretary of the Treasury by virtue of General License No. 94 and by the Richards letter of December 23, 1946. Moreover, it is clear from the record that the Richards letter of December 23, which authorized RemRand to make the contract here in question was issued only after consultation with the Department of Justice whose concurrence must, therefore, be presumed. (App. 299-304, 321, 322.)

In view of the foregoing, it is clear that the Findings and Conclusions of the trial Court that no license or authorization was ever obtained under the United States Trading With the Enemy Act permitting RemRand to make the contract here in question and, accordingly, that such contract is unenforceable, are completely erroneous and should be reversed.

POINT VII.

THE FINDINGS OF THE TRIAL COURT ARE NOT BINDING ON THIS COURT.

As most of the points set forth in this Brief are factual and documentary in nature, this Reviewing Court can reverse the pertinent Findings of Fact under the "clearly erroneous" test of Rule 52(a), Federal Rules of Civil Procedure (28 U. S. C. A. Fed. Rules Civ. Proc.).

That test stems from the desire to make applicable the former Equity practice, (See H. R. Doc. No. 583, 75th Cong., 3d Sess.) under which an Appeal brought up the whole record. Accordingly, any Federal Appellate Court is authorized under Rule 52(a) to review the evidence and make such order or decree as the Court of the first instance ought to have made, giving proper weight to findings based on oral testimony which the trial Court hears. Interpreting the former Equity practice, the Supreme Court in *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395, 68 S. Ct. 525, 542, said:

> "The practice in equity prior to the present rules of Civil Procedure was that the findings of the Trial Court when dependent on *oral testimony* and when the candor and credibility of the witnesses could best be judged had great weight with the Appellate Court. *The findings were never conclusive, however.*" (Italics added)

As to the oral testimony heard by the trial Court, its Findings are not conclusive on review.

In this Equity case the larger part of the evidence consisted of Depositions and Documents as shown by the following footnote.[14] The Court of Appeals for the Seventh Circuit has declared that a District Court's finding where

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[14] **List of Documents and Depositions**

A) Minutes of Interhandel

1) Intervenor's Exhibits Nos. 17AA; 17BB; 17CC; 17DD; 17EE; 17FF; 17GG; 17HH; 17II; 17JJ; 17KK; 17LL; 17MM; 17NN; 17OO; 17PP; 17QQ; 17RR; (R. 2774-2811; App. 334-365).

B) Correspondence and Memoranda

1) Intervenor's Exhibits Nos. 1; 2; 3; 5A; 8; 9; 10; 11; 12; 13; 15. (R. 2693 *et seq.*, App. 319-333).
2) Intervenor's Exhibits Nos. 18; 19; 23; 29; 36; 47; 50; 51; 52; 55. (R. 2812 *et seq.*, App. 366-393.
3) Plaintiff's Exhibits Nos. 1; 2A; 8; 9; 13A; 14B; 14C; 20; 23; 26. (R. 2363 *et seq.*, App. 287-319).

C) Depositions

1) Archibald (R. 820 *et seq.*, App. 137 *et seq.*)
2) Wehrli, Ulrich (R. 936 *et seq.*, App. 147 *et seq.*)
3) Richner (R. 988 *et seq.*, App. 145 *et seq.*)
4) Iselin (R. 1550 *et seq.*, App. 254 *et seq.*)

the testimony consists of Documentary evidence and Depositions are "subject to free review unaffected by presumptions which ordinarily accompany • • • findings on controverted issues." *Carter Oil Co.* v. *McQuigg,* 112 F. 2d 275, 279 (C. C. A. 7).

This Reviewing Court in the recent case of *Dollar* v. *Land,* (decided July 17, 1950, No. 10299) had occasion to consider in great detail the question of the Federal Reviewing Court's scope of authority and power to disregard the findings of the trial Court sitting in Equity and, of course, without a jury. In that recent case this Court cited and quoted the following language from the *Gypsum* case, *supra:*

> "Since judicial review of findings of trial courts does not have the statutory or constitutional limitations of findings by administrative agencies or by a jury, this Court may reverse findings of fact by a trial court where 'clearly erroneous.' "
>
> • • •
>
> "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

This Court in the *Dollar* v. *Land* case also quoted with approval the following language from the opinion of Judge Frank in *Orvis* v. *Higgins,* 180 F. 2d 537, 539 (C. C. A. 2):

> "When a trial judge sits without a jury, the rule varies with the character of the evidence: a) If he decides a fact issue on written evidence alone, we are as able as he to determine credibility, and so we may disregard his finding. b) *Where the evidence is partly oral and the balance is written or deals with undisputed facts, then we may ignore the trial judge's findings and substitute our own,* (1) *if the written evidence or some undisputed fact renders the credibility of the oral testimony extremely doubtful,* or (2) if the trial judge's finding must rest exclusively on written evidence or the undisputed facts, so that his evaluation of credibility has no significance." (Italics added)

Accordingly, it is clear that the existing numerous and extended official Minutes of Interhandel in this case and the several depositions create a situation where the findings of the trial Court are not at all binding on this Court.[15]

It is a well known fact that in this Circuit and perhaps in others, there is a saying "To the victor belongs the findings". It is true that in this action the trial judge struck two paragraphs on the subject of fraud from the findings and conclusions. Aside from this, he adopted the "victor's" language, hook, line and sinker, as an examination of the record will show. It is submitted that the many errors committed by the trial Court are attributable in part to this wholesale adoption of counsel's suggested findings and conclusions.

Accordingly, we submit that the extraordinary extent of the documentary evidence, the relatively slight conflict in the testimony taken before the trial Court, and indeed the unusual nature of the case itself, combine to put this Reviewing Court in a position to reverse these erroneous factual findings of the trial Court.

Before concluding our argument, we would like to propound two questions, namely:

Shall a Court of Equity in good conscience permit Interhandel to breach its agreement formalized by so many documents, and hold in effect as a matter of law that the injured party will be afforded no remedy and that the welching party may go scot-free?

Is the only sanction against an offending party, under these circumstances, to be that it may no longer be classed as a "gentleman"?

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[15] For other cases and authorities in addition to those cited and discussed in the text, see: *Equitable Life Assur. Soc. of the United States* v. *Irelan*, 123 F. 2d 462 (C. C. A. 9); *Fleming* v. *Palmer*, 123 F. 2d 749, 751 (C. C. A. 1), *cert. den.*, 316 U. S. 662, 86 L. Ed. 1739; 3 Moore's Federal Practice (Cum. Supp., 1949, pp. 154-155).

CONCLUSION.

On the facts and the law the Intervenor was entitled to a Declaratory Judgment in accordance with the prayer in its Amended Petition, and therefore the Judgment of the District Court should be reversed.

Respectfully submitted,

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EXHIBITS

EXHIBIT A TO THIS BRIEF.

[For Comment on this Exhibit see Brief p. 13.]

The Official Minutes Authorizing the Interhandel Offer Analyzed.

Note. The May 18, 1946, confidential Minutes of Interhandel (App. 336-337) at once disclose the lack of openness and frankness and the Continental methods of Interhandel business, as compared with the usually blunt and forthright American domestic methods. Thus these Minutes began with an ambiguity, and in fact a contradiction, when they say:

"First of all it (the Board) recognizes that it would not be advisable to bind oneself definitely by *an offer of Sale with fixed period of limitations"*, etc.

"On the other hand it is resolved to *announce our Readiness/ Willingness to sell* the whole participation in the GAF to an American group which is interested."

Then follows a specification of terms, as follows:

"The following conditions are to be designated for this: a) Cancellation of the discrimination against Interhandel, its Directors; important shareholders and their Directors, as well as the other Companies which were placed on the blacklist as a consequence of their relation to *the Interhandel Complex."*

(NOTE. The meaning of this "*Complex*" idea, and indeed some of the other language here used, is difficult for an American lawyer to comprehend. It clearly hints at sub-surface matters that are known only in confidence to Interhandel.)

"b) Release of all blocked properties of the above mentioned persons and companies, especially of the bank balances and dividend sums due to Interhandel on the strength of the GAF participation."

"The price would have to amount to" etc.

* * * * * * *

"The payment of the purchase price and delivery of the shares would have to take place in Basle without any further deduction."

"It is to be explicitly established that the solution proposed is made without prejudice to our legal standpoint."

"Messrs. Dr. Hans Sturzenegger and Walter Germann are instructed to transmit the above proposals to General Director Richner, in the sense that we would be prepared to accept a licensed Offer of purchase by the American interested parties equipped with the above conditions provided that it is made before 30th June, 1946, with absolute validity." (All italics added)

(This concludes the May 18, 1946 Minutes.)

EXHIBIT B TO THIS BRIEF.

Table of Interhandel's Own Language About Its June 6, 1946 Oral Offer.

(See comment on this Table, page 31 of this Brief.)

Date	Official Terminology, etc., used by Interhandel.	App.
5-16-46	"* * * the American group requested that we should notify our readiness/willingness to sell in the sense of a binding offer of sale for a limited period of time".	335
5-18-46	"It is resolved to announce our readiness/willingness to sell the whole participation in the GAF to an American group".	336
7-4-46	"As a result of numerous contacts * * * * with the representatives of Remington Rand—a counter-proposal was made—of the readiness/willingness announced by us to accept an Offer" (for the price of 25 million dollars, etc.).	337
7-25-46	"The statement of readiness/willingness given to Mr. Richner * * * * is renewed and/or prolongated undissolvably until September 30, 1946 with the possibility to withdraw it from then on by observing a 14 day period of notice".	340
10-15-46	"The Settlement (sic), at present valid according to which our declaration of readiness/willingness tacitly continues in force and can only be retracted under observation of a period of notice of 14 days, represents a solution which serves both parties very well."	342
1-16-47	"It is not overlooked that in submitting the concrete propositions the Remington Rand Inc. has done a lot of work and and that it is still the interested party which is taking the most trouble on the American side to bring about a solution * * * * It is to be expressly confirmed to Remington Rand that we are still holding to the gentlemen's agreement."	347-8
3-17-47	"It is of importance to us to take this opportunity to confirm explicitly to you our loyalty to the Remington Rand group."	351-4
4-21-47	"We beg to inform you that * * * * We deem it necessary to cancel the gentlemen's agreement existing between us by giving the 15 days' notice, the Agreement therefore being ended on May 6th, 1947."	357
5-13-47	"The relevant reply to the Remington Rand group" (the 2 cables of Acceptance of May 5, 1947) "is to be prepared immediately in harmony with the legal positions in Switzerland and in the U. S. A."	359

EXHIBIT C TO THIS BRIEF.

Intervenor's Exhibit No. 55, for Identification.

[The Wehrli Memorandum.]

(Note: For comment on this exhibit see p. 34 of this brief)

(R. 3386, App. 391) "At the premises of International Industrie, etc., Basle, Switzerland.

Present: from Interhandel

From the Board of Directors,
Dr. Felix Iselin
Mr. August Germann
Dr. Hans Sturzenegger

From the Management,
Mr. Germann

From Union Bank of Switzerland,
Mr. F. Richner, General Manager
Dr. Ulrich Wehrli.

The representatives of Interhandel give the Declaration, which is binding for the Corporation, that Interhandel is willing/ready to accept an Offer for the purchase of its participation in General Aniline & Film Corporation, U. S. A., if such is submitted by Union Bank of Switzerland, respectively by one of the groups represented by it, and to sell that participation, provided that the Offer contains the Binding Obligation to pay as purchase price to Interhandel:

$25,000,000, as well as
52,000 fully-paid shares of Interhandel, and
28,000 half-paid shares of Interhandel;

in addition an amount of approximately $2,000,000 resulting from former banking accounts and dividend earnings has to stand at Interhandel's free disposal.

The acceptance of the offer will be {*made under* / *equipped with*} the following conditions:

(a) that $25 millions in free Swiss Francs transferred to Basle or to a corresponding gold deposit account with the Swiss National Bank in Switzerland are put at Interhandel's disposal. Thereby Interhandel would also give its agreement to keep blocked this gold deposit account with the National Bank for some time.

(b) that the above amount of approximately 2 millions is released to its full extent in the U. S. in the sense of putting it on wholly equal terms with corresponding assets of Swiss firms and persons which never were on the black list.

(c) that any discrimination that was created by putting Interhandel on the American black list is removed, and that for both Interhandel and its Directors, big shareholders, and Directors of such shareholders, as far as these persons and firms have been listed on the black list because of their connections to Interhandel. The removal of any dicrimination has to be realized in particular through (this word is supplied by the translator as it apparently seems to be omitted in the German text) the release of the blocked assets of these persons and firms in the U. S. in the sense of putting them on wholly equal terms with corresponding assets of Swiss firms and persons which never were listed on the black list.

(d) that the above-mentioned 80,000 shares of Interhandel are put at the Corporation's free disposal.

If the above conditions are fulfilled, Interhandel will transfer its participation in G. A. F. and all assets that might exist in the U. S. to the buyers.

The binding to the above promise is limited as to time as follows:

Until June 18, 1946, 9 a.m., the party interested in the purchase has to declare that it is willing to buy the stockholding of Interhandel in GAF under the conditions described here and that in this sense it will strive for the necessitated approval of the appropriate American Government Agencies.

After receiving such a declaration Interhandel holds itself bound to its declaration given orally on June 6, 1946, (concerning its ready/willingness to accept a purchase Offer for GAF under certain conditions and against a certain price) further until June 30, 1946. Within this further period the party interested in the purchase has to submit to Interhandel a binding Offer for carrying through this transaction on the basis set forth and based on the necessary license thereto.

If this binding declaration is not made within the period provided for, Interhandel will not hold itself bound any longer to its declaration of June 6, 1946."

SUPPLEMENT

SUPPLEMENT TO BRIEF

This Supplement to the Brief includes the following:

1. Vesting Order No. 907 relating to shares of stock General Aniline & Film Corporation.
2. Executive Order No. 8389, as amended.
3. Executive Order No. 9193, as amended.
4. Executive Order 9788.
5. Executive Order 9989.
6. Withdrawal of the Proclaimed List of Certain Blocked Nationals.
7. General Ruling No. 12.
8. General Ruling No. 19.
9. General License No. 94.
10. Regulations Prescribing Organization, Foreign Funds Control.

OFFICE OF ALIEN PROPERTY CUSTODIAN
WASHINGTON

Vesting Order No. 907

RE: CERTAIN CAPITAL STOCK AND OTHER INTERESTS IN GENERAL ANILINE & FILM CORPORATION

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

(a) Finding that I. G. Farbenindustrie, A. G., whose last known address was represented to the undersigned as being Frankfurt, Germany, is a national of a designated enemy country (Germany);

(b) Finding that the shares of stock (constituting a substantial part, namely, approximately 97% of all outstanding shares) of General Aniline & Film Corporation, a Delaware corporation, which is a business enterprise within the United States, which shares were covered by vesting order issued by the Secretary of the Treasury under date of February 16, 1942, and which are described therein, and which are thereafter vested by the undersigned pursuant to Vesting Order No. 5 of April 24, 1942, and delivered to the undersigned by the Secretary of the Treasury, were, prior to such vesting

thereof by the Secretary of the Treasury, owned by or held for the benefit of said I. G. Farbenindustrie, A. G.;

(c) Finding, therefore, that said business enterprise is a national of a designated enemy country (Germany);

(d) Finding that 16,186 shares (other than the shares referred to in subparagraph (b) and those vested by the undersigned pursuant to Vesting Order Number 155 of September 19, 1942), of Class A common stock of said business enterprise are owned by or held for the benefit of nationals of designated enemy countries (Japan and Germany), the names in which such shares are registered and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each, are respectively set forth in Exhibit A attached hereto and made a part hereof;

(e) Determining, therefore, that said 16,186 shares of stock are interests in the aforesaid business enterprise held by nationals of designated enemy countries (Japan and Germany);

(f) Finding that all right, title, interest and claim of any name or nature whatsoever of H. Sturznegger and Company of Basle, Switzerland, in and to all indebtedness, contingent or otherwise and whether or not matured, owing to said company by William H. vom Rath, including but not limited to all security rights in and to any and all collateral (including 300 shares of Class A common stock of General Aniline & Film Corporation, registered in the name of William H. vom Rath) for any or all of such indebtedness and the right to enforce and collect such indebtedness, is property of a company which is presently on the Proclaimed List of Certain Blocked Nationals promulgated pursuant to Proclamation 2497 of the President of the United States of America of July 17, 1941 and which is owned or controlled by the aforesaid I. G. Farbenindustrie, A. G., and, therefore, is property within the United States owned by a national of a designated enemy country (Germany) and also is an interest in the aforesaid business enterprise owned by or controlled by a national of a designated enemy country (Germany);

(g) Finding that 36 shares of $1.00 par value common stock of Agfa Ansco Corporation of New York, the holders of which are entitled to receive (pursuant to a merger agreement executed in 1939 under the terms of which said Agfa Ansco Corporation of New York was absorbed by General Aniline & Film Corporation) one share of Class A common stock of General Aniline & Film Corporation for each three shares of such stock of Agfa Ansco Corporation of New York, are owned by or held for the benefit of nationals of Germany and Hungary, the names in which such shares are registered and the names and last known address of the persons for whom such shares are held and the number of shares held for each are respectively set forth in Exhibit B attached hereto and made a part hereof;

(h) Finding, therefore, that such shares of stock of Agfa Ansco Corporation of New York are interests in the aforesaid business enterprise held by nationals of designated enemy countries (Germany and Hungary);

(i) Finding that 28 shares $1.00 par value common stock of Agfa Ansco Corporation of Delaware, the holders of which are entitled to receive (pursuant to a merger agreement executed in 1939 under the terms of which said Agfa Ansco Corporation of Delaware was absorbed by General Aniline & Film Corporation) one share of Class A common stock of General Aniline & Film Corporation for each three shares of such stock of Agfa Ansco Corporation of Delaware, are owned by or held for the benefit of nationals of Germany, the names in which such shares are registered and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each are respectively set forth in Exhibit C attached hereto and made a part hereof;

(j) Finding, therefore, that such shares of stock of Agfa Ansco Corporation of Delaware are interests in the aforesaid business enterprise held by nationals of a designated enemy country (Germany);

(k) Determining that to the extent that any or all of the aforesaid nationals are persons not within a designated enemy country, the national interest of the United States requires that each such person be treated as a national

of one of the aforesaid designated enemy countries (Germany, Japan, or Hungary);

(l) Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order of Act or otherwise; and

(m) Deeming it necessary in the national interest;

hereby vests in the Alien Property Custodian the shares of stock and other interests described in subparagraph (d), (f), (g) and (i) to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1 within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, viladity or right to allowance of any such claim.

The terms "national", "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Executed at Washington, D. C. on February 15, 1943.

(Signed) LEO T. CROWLEY.

(Official Seal)

EXHIBIT A

16,186 shares of Class A common stock of General Aniline & Film Corporation, the names in which such shares are registered, and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each are, respectively, as follows:

Names in which registered	*Names and last known addresses of persons for whom they are held*	*Number of shares*
Brown Brothers Harriman and Company	I. G. Farbenindustrie, A.G., Frankfurt, Germany	15,950
Brown Brothers Harriman and Company	H. Sturznegger and Company of Basle, Switzerland (subsidiary of I. G. Farbenindustries, A. G. and presently on The Proclaimed List of Certain Blocked Nationals promulgated pursuant to Proclamation 2497 of the President of the United States of America of July 17, 1941)	191
Hurley & Company	Ing Franz Niasl Vienna, Germany	10
Hurley & Company	Benjamin Kopf Yokohama, Japan	13
Hurley & Company	Deutsche Landerbank, A. G., Berlin, Germany (sub a/c Customers Deposit)	1
Hurley & Company	Exportkreditbank, A. G., Berlin, Germany (sub a/c Customers Account for Custody)	1

Egger & Company	Deutsche Zentralgerrossenschaftskasse Berlin, Germany (sub a/c Clients Account)	2
Egger & Company	Frankfurter Bank, Frankfurt A. M., Germany (sub a/c Clients Account)	16
Egger & Company	Vermolgensverwalturg und Abwicklungsstelle, G.m.b.H., chen, Germany	2
	Total	16,186

EXHIBIT B

36 shares of $1.00 par value common stock of Agfa Ansco Corporation of New York, the names of which such shares are registered, and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each are, respectively, as follows:

Names in which registered	*Names and last known addresses of persons for whom they are held*	*Number of shares*
Fritz Buschbaum	Fritz Buschbaum Darmstadt, Germany	4
Gisella Fejer	Gisella Fejer Budapest, Hungary	8
Waldemar Jungheinrich	Waldemar Jungheinrich, Land, Germany	14
Rudolf Otto Sandmann	Rudolf Otto Sandmann Hamburg, Germany	2
Hans Vatter	Hans Vatter Manheim, Germany	3
Karl Von Hagen	Karl Von Hagen Darmstadt, Germany	5
	Total	36

EXHIBIT C

28 shares of $1.00 par value common stock of Agfa Ansco Corporation of Delaware, the names in which such shares are registered, and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each are, respectively, as follows:

Names in which registered	*Names and last known addresses of persons for whom they are held*	*Number of shares*
Herman Buhre	Herman Buhre Antona, Germany	6
Johann Herzer and Zenta Herzer	Johann Herzer and Zenta Herzer, Marquartstein, Germany	2
Freiherr Gotz von Wangenheim	Freiherr Gotz von Wangenheim, Wein, Germany	20
	Total	28

Executive Order No. 8389, As Amended

REGULATING TRANSACTIONS IN FOREIGN EXCHANGE AND FOREIGN OWNED PROPERTY, PROVIDING FOR THE REPORTING OF ALL FOREIGN-OWNED PROPERTY AND RELATED MATTERS. (6 F.R. 2897, 6 F.R. 3823, 6 F.R. 4795, 6 F.R. 6348, 6 F.R. 6530, 6 F.R. 6625, 6 F.R. 6785)

By virtue of and pursuant to the authority vested in me by section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is necessary in the interest of national defense and security, I, Franklin D. Roosevelt, President of the United States of America, do prescribe the following:

• • • • • • •

SECTION 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof,

or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals, or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership or property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibtions.

* * * * * * *

SECTION 3. The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

* * *

(j) June 14, 1941-

* * *

Switzerland

* * *

* * * * * * *

SECTION 5.

E. The term "national" shall include,

* * *

(ii) Any * * * corporation * * * organized under the laws of * * * such foreign country * * *.

* * * * * * *

SECTION 7. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

Executive Order No. 9193, as Amended.

AMENDING EXECUTIVE ORDER No. 9095 ESTABLISHING THE OFFICE OF ALIEN PROPERTY CUSTODIAN AND DEFINING ITS FUNCTIONS AND DUTIES AND RELATED MATTERS.

Note: Executive Order No. 9095 dated March 11, 1942 (7 F. R. 1971) was amended July 6, 1942 by Executive Order No. 9193 (7 F. R. 5205) and on June 8, 1945 by Executive Order No. 9567)10 F. R. 6917). Following is the text of Executive Order No. 9193 as amended by Executive Order No. 9567.

By virtue of the authority vested in me by the Constitution, by the First War Powers Act, 1941, by the Trading with the enemy Act of October 6, 1917, as amended, and as President of the United States, it is hereby ordered as follows:

Executive Order No. 9095 of March 11, 1942, is amended to read as follows:

1. There is hereby established in the Office for Emergency Management of the Executive Office of the President the Office of Alien Property Custodian, at the head of which shall be an Alien Property Custodian appointed by the President. The Alien Property Custodian shall receive compensation at such rate as the President shall approve and in addition shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of his duties. Within the limitation of such funds as may be made available for that purpose, the Alien Property Custodian may appoint assistants and other personnel and delegate to them such functions as he may deem necessary to carry out the provisions of this Executive Order.

2 * * * When the Alien Property Custodian determines to exercise any power and authority conferred upon him by this section with respect to any of the foregoing property over which the Secretary of the Treasury is exercising any control and so notifies the Secretary of the Treasury in writing, the Secretary of the Treasury shall release all control of such property, except as authorized or directed by the Alien Property Custodian.

* * * * * * * * *

4. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Alien Property Custodian under any other provision of this Executive Order, the Secretary of the Treasury and the Alien Property Custodian are authorized and empowered, either jointly or severally, to prescribe from time to time, regulations, rulings, and instructions to carry out the purposes of this Executive Order. The Secretary of the Treasury and the Alien Property Custodian each shall make available to the other all information in his files to enable the other to discharge his functions and shall keep each other currently informed as to investigations being conducted with respect to enemy ownership or control of business enterprises within the United States.

• • • • • • • • •

12. Any orders, regulations, rulings, instructions, licenses or other actions issued or taken by any person, agency or instrumentality referred to in this Executive Order, shall be final and conclusive as to the power of such person, agency or instrumentality to exercise any of the power or authority conferred upon me by sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended; and to the extent necessary and appropriate to enable them to perform their duties and functions hereunder, the Secretary of the Treasury and the Alien Property Custodian shall be deemed to be authorized to exercise severally and all authority, rights, privileges and powers conferred on the President by sections 3 (a) and 5 (b) of the Trading with the enemy Act of October 6, 1917, as amended, and by sections 301 and 302 of title III of the First War Powers Act, 1941, approved December 18, 1941. No persons affected by any order, regulation, ruling, instruction, license or other action issued or taken by either the Secretary of the Treasury or the Alien Property Custodian shall be entitled to challenge the validity thereof or otherwise excuse his actions, or failure to act, on the ground that pursuant to the provisions of this Executive Order, such order, regulation, ruling, instruction, license or other action was within the jurisdiction of the Alien Property Custodian rather than the Secretary of the Treasury or vice versa.

13. Any regulations, rulings, instructions, licenses, determinations or other actions issued, made or taken by any agency or person referred to in this Executive Order pur-

porting to be under the provisions of this Executive Order or any other proclamation, order or regulation, issued under sections 3 (a) or 5 (b) of the Trading with the Enemy Act, as amended, shall be conclusively presumed to have been issued, made or taken after appropriate consultation as herein required and after appropriate certification in any case in which a certification is required pursuant to the provisions of this Executive Order.

Executive Order No. 9788.

Transferring the Functions of the Alien Property Custodian to the Attorney General.

By virtue of the authority vested in me by the Constitution and statutes, including the Trading with the Enemy Act of October 6, 1917, 40 Stat. 411, as amended, and the First War Powers Act, 1941, 55 Stat. 838, as amended, and as President of the United States, it is hereby ordered, in the interest of the internal management of the Government, as follows:

1. The Office of Alien Property Custodian in the Office for Emergency Management of the Executive Office of the President, established by Executive Order No. 9095 of March 11, 1942, is hereby terminated; and all authority, rights, privileges, powers, duties, and functions vested in such Office or in the Alien Property Custodian or transferred or delegated thereto are hereby vested in or transferred or delegated to the Attorney General as th case may be, and shall be administered by him or under his direction and control by such officers and agencies of the Department of Justice as he may designate.

* * * * * * * * *

5. This order shall become effective on October 15, 1946.

(Dated October 14, 1946; 11 F. R. 11981, October 15, 1946)

Executive Order No. 9989.

Transferring Jurisdiction Over Blocked Assets to the Attorney General.

* * * * * * * * *

1. The Attorney General is hereby authorized and directed to take such action as he may deem necessary with

respect to any property or interest of any nature whatsoever in which any foreign country designated in Executive Order No. 8389 of April 10, 1940, as amended, or any national thereof has any interest (including property subject to the proviso of paragraph (a) of General License No. 94, as amended (31 C. F. R., 1947 Supp., 131.94), and including any Scheduled Securities within the meaning of General Ruling No. 5, as amended (31 C. F. R., 1947 Supp., 131, App. A), both issued by the Secretary of the Treasury) which on September 30, 1948, is not unblocked or otherwise removed from the restrictions of the said Executive Order No. 8389, as amended, by any order, regulation, ruling, instruction, license, or other action issued or taken by the Secretary of the Treasury. In the performance of his duties under this order, the Attorney General or any officer, person, agency, or instrumentality designated by him, may exercise all powers and authority vested in the President by sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended. As used herein, the terms "national" and "foreign country" shall have the meanings prescribed in Executive Order No. 8389, as amended.

2. With respect to the property and interests referred to in section 1 hereof, all orders, regulations, rulings, instructions, or licenses issued by the Secretary of the Treasury under the authority of Executive Order No. 8389, as amended, and Executive Order No. 9095, as amended, and in force on September 30, 1948, shall continue in full force and effect except as amended, modified, or revoked by the Attorney General.

3. It is the policy of this order that administrative action under paragraph 1 hereof shall be taken by the Attorney General or any officer, person, agency, or instrumentality designated by him. However, nothing in this order shall be deemed to limit or remove any powers heretofore conferred upon the Secretary of the Treasury or the Attorney General by statute or by Executive Order. No person affected by any order, regulation, ruling, instruction, license, or other action issued or taken by either the Secretary of the Treasury or the Attorney General may challenge the validity thereof or otherwise excuse his actions, or failure to act, on the ground that pursuant to the provisions of this Executive Order, such order, regulation, ruling, instruction, license, or other action was within the jurisdiction of the

Attorney General rather than the Secretary of the Treasury or vice versa.

4. This order shall become effective as of midnight, September 30, 1948.

(Dated August 20, 1948; 13 F. R. 4891, August 24, 1948)

Withdrawal of the Proclaimed List of Certain Blocked Nationals.

By virtue of the authority vested in the Secretary of State, acting in conjunction with the Secretary of the Treasury, the Attorney General, and the Secretary of Commerce, by Proclamation 2497 of the President of July 17, 1941 (3 C. F. R., Cum. Supp. p. 241), the existing Proclaimed List of Certain Blocked Nationals is hereby withdrawn effective immediately.

(Dated July 8, 1946, 11 F. R. 7567)

General Ruling No. 12.

Relating to Transfers of Property in a Blocked Account Effected Without a License.

§ 511.212 General Ruling No. 12. (a) Unless licensed or otherwise authorized by the Secretary of the Treasury, (1) any transfer after the effective date of the order is null and void to the extent that it is (or was) a transfer of any property in a blocked account at the time of such transfer; and (2) no transfer after the effective date of order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account (irrespective of whether such property was in a blocked account at the time of such transfer).

(b) Unless licensed or otherwise authorized by the Secretary of the Treasury, no transfer before the effective date of order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account unless the person with whom such blocked account is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to the effective date of the order.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of section 5 (b) of the Trading with the Enemy Act, as amended, and Order, regulations, instructions and rulings issued thereunder.

* * * * * * * * *

(e) * * * (3) The term "blocked account" shall refer to a blocked account (including safe deposit box) of a party to the transfer and shall have the meaning prescribed in General Ruling No. 4 except that it shall not be deemed to include an account not treated as a blocked account by the person with whom such account is held or maintained.

* * * * * * * * *

(Issued by the Secretary of the Treasury April 21, 1942 (7 F. R. 2991.) The Regulation is now codified as Sec. 511.212, Part 511, Chapter II—Office of Alien Property, Department of Justice, Title 8, C. F. R., 1949 Edition).

General Ruling No. 19, As Amended.

RELATING TO RELEASE OF PROPERTY VESTED BY ALIEN PROPERTY CUSTODIAN.

(a) *Control of vested German and Japanese property released to Alien Property Custodian.* All control under Executive Order No. 8389, as amended, and Executive Order No. 9193, as amended, of any property or interest of Germany or Japan or any national thereof vested by the Alien Property Custodian is hereby released to the Alien Property Custodian. The release of any such property or interest shall take effect on the effective date of the vesting order of the Alien Property Custodian covering the property or interest.

(Issued by the Secretary of the Treasury December 6, 1945 (10 F. R. 14775), Amended August 2, 1946 (11 F. R. 8350). Revoked December 22, 1948, 13 F. R. 8327).

General License No. 94, as Amended.

RELATING TO THE GENERAL LICENSING OF CERTAIN BLOCKED COUNTRIES.

• • • (a) *Blocked countries generally licensed subject to certain conditions.* A general license is hereby granted licensing all blocked countries and nationals thereof to be regarded as if such countries were not foreign countries designated in the order: *Provided,* That

(1) Any property in which on the effective date hereof any of the following had an interest; (i) any blocked country (including countries licensed hereby) or person therein; or (ii) any other partnership, association, corporation, or other organization, which was a national of a blocked country (including countries licensed hereby) by reason of the interest of any such country or person therein; or

(2) Any income from such property accruing on or after the dates specified in paragraph (e) of this section shall continue to be regarded as property in which a blocked country or national thereof has an interest and no payment, transfer, or withdrawal or other dealing with respect to such property shall be effected under, or be deemed to be authorized by, this paragraph.

• • • • • • • • •

(e) *Effective Date.* The effective date of this section shall be December 7, 1945, except that it shall be October 5, 1945 as to France, November 20, 1945 as to Belgium, November 30, 1946 as to Switzerland and Liechtenstein, December 31, 1946 as to Germany and Japan, and March 28, 1947 as to Sweden.

• • • • • • • • •

(Issued December 7, 1945, by Secretary of the Treasury under Executive Order No. 8389, as amended, Executive Order No. 9193, as amended, Section 5 (b) of the Trading with the Enemy Act, as amended (10 F. R. 14814). Amended so as to include Switzerland November 30, 1946 (11 F. R. 13959. The license has been amended by the Office of Alien Property and codified as Section 512.194, Part 512, Chapter II—Office of Alien Property; Department of Justice, Title 8, C. F. R., 1949 Edition).

Regulations Prescribing Organization Foreign Funds Control, Treasury Department.

Sec. 138.1 *General statement of functions.* The Bureau of Foreign Funds Control acts pursuant to powers of the President under Sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended, (50 U. S. C. App., secs. 3 (a) and 5 (b)) delegated to the Secretary of the Treasury by Executive Orders Nos. 8389 and 9193, as amended, (31 CFR, Cum. Supp., 127.9-127.17; 3 CFR, Cum. Supp., Chap. II, 3 CFR, 1945 Supp., Chap. II). The Control exercises these powers so far as they apply to property of and transactions with foreign countries and their nationals and to trade and communication with the enemy. Through a system of licenses, rulings and other documents, collectively known as the freezing regulations, the Control regulates financial and property transactions involving blocked countries and their nationals as defined under Executive Order No. 8389. With regard to liberated and neutral blocked countries, the primary purposes of the Control are to uncover enemy assets and prevent the consummation of looting transactions initiated by enemy countries. The general aim with respect to enemy countries and their nationals is to immobilize their assets pending their ultimate disposition, while additional controls are maintained on trade and communication with Germany and Japan with a view to insuring that they are conducted only in accordance with the national policy of the United States. The Control also administers regulations designed to prevent the importation into the United States of looted securities, currency, checks and drafts.

* * * * * * * *

Sec. 138.4 *Delegation of final authority—(a) The central organization.* Regulations, rulings, general licenses, and other public documents, except public interpretations, are issued by the Secretary of the Treasury. The Director of Foreign Funds Control has been delegated general authority to take final action with respect to all other Foreign Funds Control matters.

* * * * * * * *

Officers acting in the place of other officers have all the authority of the persons for whom they act.

(Published in the Federal Register (11 F. R. 177A-96, 13482, 12 F. R. 6) as required by the Administrative Procedure Act.)

BRIEF FOR SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S.A., ETC. (I. G. CHEMIE) (INTERHANDEL), APPELLEE

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 10,739

REMINGTON RAND, INC., *Appellant*,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S.A. ETC. (I. G. CHEMIE) (INTERHANDEL), *Appellee*,

and

J. HOWARD MCGRATH, Attorney General of the United States, ET AL., *Appellees*.

Appeal From a Judgment of the District Court of the United States for the District of Columbia.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

STATEMENT OF QUESTIONS PRESENTED

In the opinion of appellee, the questions are:

(1) Whether the District Court's finding was clearly erroneous that the conditions contained in appellee's offer of June 6, 1946, to appellant had to be fulfilled before the ultimate expiration date of May 6, 1947, such conditions providing for the return of property formerly owned by the appellee which had been vested by the United States authorities pursuant to the Trading With The Enemy Act, the elimination of certain discriminations against persons affiliated with appellee imposed pursuant to the said Act and appellant's tender of the purchase price of the Swiss franc equivalent of $25,000,000 and a designated number of shares of appellee.

(2) Whether the Court's further findings were clearly erroneous: (a) that the offer of appellee was intended to constitute a "gentlemen's agreement", as that term is used in Swiss business practice, and, as such, to give rise to no legally enforceable rights; (b) that appellant's failure to accept resulted in the expiration of the offer; (c) that appellee's offer and appellant's purported acceptance are unenforceable because appellee was subjected to Swiss blocking laws at the time of its offer and appellant's purported acceptance, thus rendering void under Swiss law such offer and acceptance; and (d) that the offer and purported acceptance are unenforceable because appellant failed to obtain authorization under the United States Trading With The Enemy Act.

(3) Whether the Court erred and, if so, whether it committed reversible error in: (a) excluding the Wehrli memorandum; (b) excluding a clause in the Archibald deposition; and (c) admitting portions of Whiteford's testimony of his conversation with Rand.

INDEX.

CITATIONS.

Cases.

MISCELLANEOUS.

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SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S.A., ETC. (I. G. CHEMIE) (INTERHANDEL), *Appellee,*

and

J. HOWARD MCGRATH, Attorney General of the United States, et al., *Appellees*

Appeal From A Judgment Of The District Court Of The United States For The District Of Columbia

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BRIEF FOR SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S.A., ETC. (I. G. CHEMIE) (INTERHANDEL), APPELLEE

JURISDICTIONAL STATEMENT

The jurisdictional statement contained in appellant's brief is accurate and therefore is not repeated here.

COUNTER-STATEMENT OF CASE

This case is essentially controlled by the facts, and ten special findings of fact were made by the District Court, and from these facts the Court reached conclusions of law consisting of six numbered paragraphs.* The Court also filed a written memorandum (26), and judgment dismissing the complaint was filed April 26, 1950 (37).

In view of the importance of the facts, it seems appropriate to review the essential facts at this point noting those facts which are admitted by appellant and those which are in dispute. The need for reviewing closely the essential facts is also demanded in view of the failure of Remington Rand to do so in its brief.**

In 1942, 455,624 A shares and 2,050,000 B shares of General Aniline & Film Corporation, which were then owned by Interhandel, were vested or seized by the United States Alien Property Custodian.† These will hereafter be referred to as the GAF vested shares.

Interhandel, a Swiss corporation, had other property in the United States representing bank and dividend accounts in the amount of approximately $2,000,000. These accounts

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* The Findings of Fact, hereafter referred to as Findings, appear on pp. 31-36 of the Joint Appendix and the conclusions of law, hereafter referred to as Conclusions, appear on pp. 36-37. References throughout the brief are to pages of the Joint Appendix unless otherwise indicated.

** Remington Rand will be referred to hereafter as RemRand, the abbreviation used in appellant's brief, and its brief referred to as appellant's brief. Appellee was referred to as Interhandel and as Chemie in the trial. We shall use the word Interhandel throughout this brief.

The contentions of the parties are stated at pp. 8 et seq. hereof.

At this stage it should be noted that the brief of this appellee is directed at RemRand's appeal (No. 10739). The Government's appeal (No. 10650) from the order denying a motion for an order entitling the Government and Interhandel to settle the main case, regardless of any rights of RemRand, was dismissed by this Court in a per curiam order dated October 30, 1950.

† This is conceded in paragraph 4 of the amended complaint of intervention (6), and the Court so found. (Finding 2, p. 31).

had also been vested or seized by the Alien Property Custodian.*

Interhandel filed suit against the successor of the Alien Property Custodian in 1948 for return of all of its vested property, alleging that it was not an enemy or an ally of an enemy.** (R. 2005).

On October 18, 1949, RemRand filed a complaint of intervention (2-5) which was supplanted by an amended complaint of intervention, filed April 17, 1950 (5-8). RemRand sought to restrain Interhandel, the plaintiff in the principal suit, from disposing of any right, title or interest in the GAF vested shares, and to obtain a declaratory judgment that RemRand was entitled to such shares when and if returned to Interhandel (6, 7). In the amended complaint it is asserted that RemRand's right to intervene and to obtain the relief sought is based on an oral declaration made on June 6, 1946, by representatives of Interhandel to representatives of appellant.

Interhandel carried on negotiations in Switzerland in May and June, 1946, with representatives of the Union Bank of Switzerland who were acting for and on behalf of RemRand. These negotiations resulted in Interhandel's making an oral† statement or offer on June 6, 1946, to representatives of RemRand.††

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* This is conceded in paragraphs 3, 4 and 5 of the amended complaint of intervention, (5, 6) and the Court so found. (Finding 3, pp. 31, 32).

** This is conceded in paragraph 2 of the amended complaint somewhat elliptically as it alleges that the principal action brought by Interhandel against the U.S. arises under Section 9(a) of the U.S. Trading With The Enemy Act (5). 40 Stat. 415 (1917), as amended, 50 U.S.C. App. § 5 (b) (1946).

† This is conceded in paragraph 5 of amended complaint of intervention (6).

†† Appellant's amended complaint refers to the oral statement or offer as a "declaration" (Par. 5, p. 6); the word "option" was used by two of appellant's witnesses (134, 137, 144). Representatives of Interhandel have also used the term "proposal" (218). It was also referred to as a "gentlemen's agreement" (Pl. Ex. 2A, pp. 289, 290; Int. Ex. 23, p. 367). The District Court called

As for the contents of the conditions contained in the statement, there is no controversy between RemRand and Interhandel. Nor is there any controversy that the original offer had June 30, 1946, as its expiration date. But there is dispute as to the time when the conditions had to be satisfied. Interhandel asserts, and the Court below so found, that if the vested GAF shares were returned to Interhandel, if its bank accounts in the amount of $2,000,000 were returned, and if discriminations under the United States Trading With The Enemy Act against Interhandel and others were discontinued, Interhandel would then be willing to accept an offer by RemRand* to buy such GAF shares for the Swiss franc equivalent of $25,000,000, payable in Basle, Switzerland, plus the delivery of 80,000 shares of Interhandel which had been part of the portfolio investments of GAF. Before the termination date of June 30, 1946, all of these conditions had to be fulfilled, *i.e.*, the return of the vested GAF shares and bank accounts, the elimination of discriminations, the payment of the $25,000,000, and the delivery of the 80,000 Interhandel shares.

RemRand asserts that these conditions and the termination date are unrelated, that it merely had to submit before the termination date a promise to buy, which would constitute an acceptance of the offer binding Interhandel to sell

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the arrangement an oral statement or offer (31, 32). For purposes of brevity it will hereafter be referred to in this brief as an offer.

There is no contention that there is any difference legally between the various terms except as to the effect under Swiss law of a gentlemen's agreement. Whether the offer was intended to be a "gentlemen's agreement" and the significance of such a characterization are items discussed at pp. 28 et seq., infra.

* Here again different phrases occur in the record to describe appellant's contemplated response to Interhandel's oral statement or offer. The amended complaint uses the phrase "offer to purchase" (7). The District Court also used this phrase in its findings (31) and the word "acceptance" in its conclusions (36). There is no contention that there is any difference legally between these phrases.

and RemRand to buy at the agreed purchase price the vested GAF shares if and when returned.*

At the meeting of June 6, 1946, when the offer was made, Interhandel was represented by Dr. Felix Iselin, President and member of the Board of Directors of Interhandel; Dr. Hans Sturzenegger, a member of the Board; Mr. Walter Germann, manager of Interhandel at the time and later a member of the Board; and Mr. August Germann, member of the Board and the father of Mr. Walter Germann.**

Pursuant to the June 6, 1946 statement, the offer was to expire on June 30, 1946. (Finding 3, pp. 31, 32). This date was extended from time to time so that it ran indefinitely subject to cancellation on 15 days notice. (Finding 3, pp. 31, 32).

On January 9, 1947, RemRand submitted a written form of option† to Interhandel for execution.†† The form provided that American Aniline & Chemical Company, a Ne-

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* Paragraph 5(b) of the amended complaint states that the purchase price included (1) $25,000,000; (2) 80,000 shares of Interhandel; and (3) $2,000,000 representing former bank and dividend accounts to be at the free disposal of Interhandel (6). Yet paragraph 5(c) adds that RemRand's offer to buy had to be "equipped with the following *conditions*": (1) The $25,000,000 to be transferred into Swiss francs in Basle or in gold ingots "at the disposition of Interhandel"; (2) "the $2,000,000 shall be entirely free in the U.S."; (3) "all black list discriminations against" certain persons removed. It was "understood that *after fulfillment of all of these conditions*" Interhandel (the plaintiff in the main case below) "would be bound to accept such offer and transfer its participation in General Aniline & Film Corporation to Remington Rand" (6, 7). (Italics supplied).

** Iselin so testified (254, 255, 256, 257); Sturzenegger so testified (47, 48, 50); Walter Germann so testified (214, 215, 217, 220); Richner so testified (145, 146); and Wehrli so testified (147, 148). Dr. Ulrich Wehrli, a witness called on behalf of RemRand should not be confused with Dr. Edmund Wehrli, called by Interhandel. The former is, or was, an assistant to Mr. Richner of the Union Bank. Dr. Edmund Wehrli is a well-known member of the Swiss bar.

† Int. Ex. 52, p. 385.

†† Testimony of Mr. Garey (110, 111, 113). The terms of the option form are discussed more fully at pp. 22 et seq., infra.

vada corporation, which had been organized by RemRand as a subsidiary in October, 1946,* more than four months after the June 6, 1946, offer, would obtain an option to purchase the GAF vested shares for $25,000,000. Interhandel refused to enter into this option agreement (Finding 4, pp. 32, 33). In March, 1947, Mr. William E. Shorten, Vice President of RemRand, proceeded to Switzerland, accompanied by Mr. Eugene L. Garey who acted as his counsel.** The objective of this trip was to obtain a written option from Interhandel, in the form set forth in Intervenor's Exhibit 52.† Conferences were held on March 10, March 14, and March 19, 1947, with Dr. Sturzenegger and Mr. Germann of Interhandel who were joined by Dr. Iselin at the last two meetings. On March 17, 1947, a letter was addressed by Interhandel to Mr. Felix Richner of the Union Bank of Switzerland, confirming the negotiations and stating that the oral statement or offer (in the letter called a "gentlemen's agreement") would be extended until April 15, 1947, cancellable thereafter on fourteen days notice†† from said date.‡ A supplemental letter, dated March 20, 1947, (Int. Ex. 8, p. 324), was transmitted by Interhandel to Mr. Shorten confirming that a written form of option had been discussed at the meetings, that under the offer (in the letter called "the Gentlemen's Agreement") the question of price was agreed upon and no ini-

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* Incidentally, American Aniline & Chemical Company, was originally named Amino Corporation when organized in October, 1946, and its name was changed to American Aniline & Chemical Company on December 19, 1946 (39).

** Testimony of Mr. Shorten (108); Mr. Garey (110, 111, 112); and Mr. Rand, President of RemRand (38, 45).

† Testimony of Mr. Garey (110, 111, 112).

†† The fifteen-day period is used although the documents, as translated, refer to a fourteen-day period. This difference was explained by Mr. Germann, in the course of his testimony, as due to "a difference of language. When we talk in German, we talk about a two-week period with fourteen days, and if we talk in French, . . . we say 'quinze', which is fifteen days, and afterwards we did not want to equivocate, so we used the longer term . . . " (253).

‡ Int. Ex. 29, pp. 369, 370.

tiative would be taken by Interhandel to start negotiations with other private parties. (Finding 5, p. 33).

On April 21, 1947, Interhandel transmitted written notice of the cancellation of the oral statement or offer and the date of termination became thereby fixed at May 6, 1947 (Int. Ex. 9, p. 325). On May 1, 1947, RemRand purported to assign to American Aniline & Chemical Company its right, title and interest in "a so-called 'gentlemen's agreement', partly written and partly oral" with Interhandel (Int. Ex. 23, p. 367). On May 5, 1947, American Aniline & Chemical Company purported to accept the alleged "agreement, partly written and partly oral." This was done by cable signed by the President of the American Aniline & Chemical Company and by letter signed by Mr. Shorten, acting in the capacity of Vice President of said company.* On May 17, 1947, Interhandel cabled the President of RemRand rejecting the purported acceptance, and pointing out that the oral statement or offer, called a "gentlemen's agreement", was personal and not assignable.**

On May 5, 1949, American Aniline & Chemical Company reassigned to RemRand its interest in "an option agreement, partly written and partly oral" between Interhandel and "Remington Rand, Inc. in relation to the right and option to purchase" the GAF vested shares.† (Finding 6, pp. 33, 34, 35).

There is no dispute that the conditions contained in the oral statement had not been satisfied by May 6, 1947.††

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* Int. Ex. 10, p. 326, 327; Int. Ex. 11, pp. 328, 329.

** Pl. Ex. 20, p. 309, 310.

† Int. Ex. 15, pp. 331, 332, 333.

†† Mr. Burroughs, trial counsel for RemRand, formally admitted at the argument: "We don't contend, however, that the conditions which they [Interhandel] say were laid down, have been fulfilled." (286). And the conditions which Interhandel asserts were laid down are precisely the same as those set forth in Paragraph 5 of the amended complaint of intervention (6, 7).

CONTENTIONS OF PARTIES.

I. Time for Fulfilling Conditions.

Interhandel's first and foremost contention is that the conditions contained in the offer of June 6, 1946, were conditions precedent which had to be fulfilled prior to the expiration date, originally June 30, 1946, and ultimately extended to May 6, 1947.

RemRand asserts that the conditions could be fulfilled at any time, and that a mere promise to buy the GAF shares, if and when returned, at the agreed purchase price would bind Interhandel. The only condition precedent was the submission of the promise before the termination date.

This issue is controlled entirely by the facts and RemRand's appeal fails if it does not establish that the lower court's finding was erroneous, that the conditions had to be fulfilled before the date of expiration.* The expiration date of Interhandel's offer, May 6, 1947, has long since passed. Appellant concedes that none of the conditions laid down in the June 6, 1946, offer has been satisfied. Hence, if pursuant to the offer, the conditions had to be fulfilled before the termination date and before an acceptance could validly be submitted by RemRand, its case collapses and the appeal falls like Lucifer—never to hope again.

II. Additional Issues.**

As separate and distinct defenses to the complaint, Interhandel made several additional contentions, all of which present essentially issues of fact.** *First,* we maintain that

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* Parenthetically it should be noted that even if appellant should prevail on this point the judgment must be affirmed, unless appellant overcomes each of the additional four points asserted by Interhandel, also controlled essentially by the facts.

** The additional defenses are examined in this brief under the heading "Additional Points of Appellee", pp. 28 et seq., infra. It becomes unnecessary to examine any of these points, however, if the District Court's finding was justified that the conditions contained in the offer were conditions precedent which had to be satisfied before the termination date. As a consequence, the primary contention of Interhandel is examined in the first section of the argument.

the offer made in Switzerland was a gentlemen's agreement, which in Swiss business practice means an agreement which the parties do not intend to be enforceable, and being unenforceable under Swiss law will not be enforced in the courts of the United States. RemRand contends that the offer was not intended to be a gentlemen's agreement. *Second,* Interhandel was subjected to Swiss blocking laws from October, 1945, to January, 1948. Under these laws an offer or contract to sell the GAF vested shares would have been void. Appellant takes the position that such a contract was not void. *Third,* we assert that the offer was made to RemRand and could be accepted only by RemRand which was not done before the date of termination, May 6, 1947. Appellant's position is that the offer ran to a group which included American Aniline & Chemical Company, a subsidiary of RemRand, created more than four months after the June 6, 1946, offer, and, that any member of the group could accept with the result that American Aniline & Chemical Co.'s acceptance of May 5, 1947, was valid.* *Fourth,* we allege that appellant never obtained a license under the United States Trading With The Enemy Act to acquire any rights to the GAF vested shares and therefore the offer and purported acceptance are null and void and unenforceable in the courts of the United States. RemRand asserts that it received a license.**

ACTION BY DISTRICT COURT.

The District Court, in a memorandum dated March 31, 1950, stated that RemRand had "failed to establish, by a preponderance of the evidence, the basic element of its claim,

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* Counsel for RemRand admitted at the trial that the attempted assignment was "a nullity" (286), and Mr. Rand admitted that American Aniline & Chemical Co.'s assets at that time were approximately $10,000 (46).

** RemRand also contends that the District Court erred in excluding the Wehrli memorandum, and part of Archibald's deposition and in admitting portions of Mr. Whiteford's testimony. (See appellant's brief, Point IV, pp. 32-42). Our answer to these points is set forth at pp. 39 et seq., infra.

namely, the existence of the agreement between itself and plaintiff on which it relies and as particularly described in the complaint of intervention. . . .'' (26). Findings of fact and conclusions of law were filed on April 26, 1950 (30-37), and judgment entered on the same date dismissing Rem-Rand's complaint of intervention, as amended (37, 38).

I. Time for Fulfilling Conditions.

It was specifically found by the District Court that the June 6, 1946, offer of Interhandel, as extended from time to time, contained conditions which were conditions precedent. Finding 3 sets forth the facts relating to the period prior to the March, 1947, negotiations in Switzerland. The finding lists the conditions of the statement or offer of Interhandel and the extension of the termination date:

> ''. . . the offer was to run indefinitely, but, if Interhandel gave Remington Rand, Inc., notice of termination of the offer, it would be terminated 15 days thereafter unless the stock had actually been returned to Interhandel and all other conditions fulfilled before the end of said 15 days.'' (32).

The Court further found that the March, 1947, negotiations resulted in Interhandel's writing two letters extending the ''gentlemen's agreement'', which meant the June 6, 1946, statement, so that such oral statement or offer was cancellable only upon fourteen days notice after April 15, 1947. (Finding 5, p. 33).

As a result of these findings and of the uncontested fact that the conditions had not been satisfied by the date of termination, May 6, 1947, the District Court concluded that Interhandel's offer ''expired May 6, 1947.'' (Conclusion 1, p. 36).

II. Additional Issues.

With respect to the other points relied on by Interhandel, the lower Court found that ''the expression 'gentlemen's agreement' in Swiss business practice means an agreement which the parties do not intend to be enforceable at law'' and that the use of this term ''as applied to the offer . . . showed

an intention of the offeror [Interhandel] that the offer was not to be enforceable at law, and no enforceable rights could result under Swiss law from the acceptance of such an offer." (Finding 7, p. 35). It was also found that Interhandel was blocked by the Swiss authorities from October, 1945, to January, 1948, and under Swiss law any contract to "transfer the stock of General Aniline & Film Corporation" of Interhandel would have been illegal and unenforceable without the consent of the Swiss, and no such consent was obtained. (Finding 9, pp. 35, 36).

Additional findings were that under Swiss law "an offer cannot be assigned" and that RemRand had not received a "license or authorization pursuant to the U. S. Trading With The Enemy Act . . . to acquire any rights in the equitable estate or interest of Interhandel in the stock of General Aniline & Film Corporation." (Findings 8, 10, pp. 35, 36).

On the basis of these facts it was concluded that "the offer and purported acceptance, being unenforceable under the law of Switzerland where the offer was made, will not be enforced in this court." (Conclusion 4, p. 36). It was further concluded that the offer "was addressed to Remington Rand, Inc." which did not accept. (Conclusion 2, p. 36). The "purported acceptance of the offer by American Aniline & Chemical Company was ineffectual . . . because the offer was not made" to that company and "the purported assignment of Remington Rand, Inc. . . . was of no effect." (Conclusion 3, p. 36). Finally, RemRand's failure to obtain authorization "pursuant to the United States Trading With The Enemy Act" rendered the "offer and purported acceptance . . . null and void, illegal and unenforceable in the Courts of the United States." (Conclusion 5, pp. 36, 37).

Judgment was entered accordingly, dismissing the complaint of intervention. (37, 38).

SUMMARY OF ARGUMENT.

I

Interhandel's offer of June 6, 1946, provided that before the expiration date of June 30, 1946, as extended ultimately to May 6, 1947, all of the conditions set forth therein had to be satisfied and unless and until so satisfied on or before such date RemRand was not entitled to accept the offer. RemRand concedes that the conditions were not satisfied before the purported acceptance by American Aniline & Chemical Company dated May 5, 1947. Hence, we submit that the purported acceptance was ineffectual.

II

Even if the fulfillment of the conditions before May 6, 1947, was not prerequisite to the submission of an acceptance, the purported acceptance was ineffectual because (a) Interhandel's offer was a "gentlemen's agreement" and gave rise to no enforceable rights; (b) the Swiss blocking of Interhandel rendered the offer and purported acceptance void under Swiss law; (c) RemRand alone and not American Aniline & Chemical Company was entitled to accept, and RemRand did not accept the offer; and (d) the offer and purported acceptance were null and void due to the failure of RemRand to obtain a license under the United States Trading With The Enemy Act.

III

The lower Court's rulings on the exclusion and admission of evidence were entirely proper and not erroneous as asserted by RemRand and even if erroneous were not prejudicial to RemRand.

ARGUMENT.

I.

Interhandel's Offer of June 6, 1946, Required That the Conditions Enumerated therein Had to Be Fulfilled before the Expiration Date.

In this section we will examine in the light of the record the controverted issue of fact as to the time within which the conditions had to be fulfilled and show that the finding of the District Court that these were conditions precedent is supported by the evidence.* Not being "clearly erroneous", this finding may not be set aside. (Rule 52(a), Federal Rules of Civil Procedure). Consequently the judgment should be affirmed.

This particular finding is supported by testimony taken at the trial of the two Interhandel representatives (Dr. Sturzenegger and Mr. Germann) who participated in all the negotiations, and by the testimony of Dr. Iselin, whose deposition was taken and who participated in the June 6, 1946, and March, 1947, negotiations on behalf of Interhandel. Thus the "candor and credibility of the witnesses would best be judged" by the trial Court and its findings must be given "great weight with the appellate court", as this Court recently observed in *Dollar* v. *Land*, App. D. C., No. 10299 (decided July 17, 1950), 184 F. 2d 245 (D. C. Cir. 1950).**

Examination of the entire record, moreover, discloses that a finding that fulfillment of the conditions need not have been accomplished before the termination date would

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* RemRand paradoxically asserts that *"the able trial Court"* committed *"most flagrant error"* in finding that fulfillment of the conditions was prerequisite to an acceptance. (Italics supplied) (appellant's brief, p. 17).

** See also Stewart v. Stewart, App. D. C., No. 10555 (decided November 2, 1950); U. S. v. National Ass'n. of Real Estate Boards, et al., 339 U. S. 485 (1950); United States v. Yellow Cab Co., 338 U. S. 338 (1949); Graver Manufacturing Co. v. Linde Air Products Company, 336 U. S. 271 (1949).

have been clearly erroneous and a mistake would have been committed.*

1. The importance of the June 6, 1946, meeting.

During the May and June negotiations in Switzerland culminating in the meeting on June 6, 1946, when Interhandel's oral statement or offer was made, it was determined whether the conditions were conditions which had to be fulfilled prior to the date of termination and prior to acceptance by RemRand. The amended complaint of intervention purports to specify the terms and conditions contained in the June 6, 1946, offer. There is not the slightest indication in the complaint that any modifications were thereafter made other than the extension of the termination date (5-8). Moreover, in the Suggested Findings submitted on behalf of the Intervenor, the appellant here, no mention is made of any change in the June 6, 1946, offer other than the extension of the termination date (27-30).

2. Testimony of the individuals present at the June 6, 1946, meeting.

As has heretofore been noted, at the June 6, 1946, meeting there were present as representatives of Interhandel the following: Dr. Felix Iselin, President, and a member of the Board of Directors of Interhandel (254-257); Dr. Hans Sturzenegger, a member of the Board of Directors of Interhandel (47, 48, 50); Mr. Walter Germann, Manager of Interhandel at the time and later also a member of the Board of Directors (214, 215, 217); and Mr. August Germann, the father of Mr. Walter Germann, a director of Interhandel

* RemRand contends that the findings are not binding on this Court, for the alleged reason that in this case "the larger part of the evidence consisted of Depositions and Documents . . ." (appellant's brief, p. 47). The analysis of the record, especially on the conditions precedent point, as set forth in our brief (pp. 16 et seq., infra), demonstrates the inaccuracy of appellant's contention. The importance of the testimony given by witnesses at the trial is demonstrated in our brief (pp. 15 et seq., infra).

(50, 220, 257).* RemRand was represented by two officials of the Union Bank of Switzerland: Mr. Felix Richner (145, 146), and Dr. Ulrich Wehrli (147, 148).

Mr. Walter Germann testified at the trial (184), as did Dr. Sturtzenegger (47) and Dr. Iselin's deposition was taken and read into the record (254). The depositions of Mr. Richner and Dr. Wehrli were taken and read into the record (145, 147). Thus the record contains the testimony of five of the six individuals who were present at the June 6, 1946 meeting.

In examining the testimony of these individuals it is found that the three Interhandel representatives entertained not the slightest doubt that satisfaction of all of the conditions was required within the time limit prescribed. Unless these were fulfilled, RemRand was not entitled to submit an acceptance.

Mr. Walter Germann's understanding as to the contents of the statement made to Mr. Richner is perfectly clear. He was first referred to the minutes of Interhandel's Board of Directors of May 16 and 18, 1946. (Int. Ex. 17AA, pp. 334-337). Having recalled a meeting with Mr. Richner shortly thereafter, Mr. Germann, when asked to explain what happened at the meeting with Mr. Richner, replied that the latter was advised of the conditions which Interhandel insisted upon as being conditions precedent but the price at that stage of the negotiations, however, was " . . . about 28 million dollars, 60,000 fully paid shares, [and] 30,000 50 per cent paid shares . . . " (214, 218)

Mr. Germann added that Mr. Richner reported that the price originally quoted by Interhandel "was not agreeable to Remington Rand" (219). But "early in June, I think it

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* Mr. August Germann did not participate in any further negotiations thereafter, nor was his testimony taken. While Dr. Sturtzenegger, Dr. Iselin and Mr. Walter Germann had their depositions taken in Washington pursuant to notices filed by RemRand, Mr. August Germann was not deposed. Due to all these factors Interhandel did not consider it necessary to have him testify. The trip to the United States from Switzerland on short notice and his preoccupation with other business would have unnecessarily inconvenienced him.

was on June 4th, we reached a meeting of our minds regarding the price" (219). He then continued and testified that Mr. Richner was informed that Interhandel had agreed to reduce the purchase price figures mentioned at the meeting on May 19 or thereabouts to $25,000,000, but that the other terms were unchanged. This particular meeting was attended also by Dr. Sturzenegger and arrangements were at that time made for the June 6, 1946, conference at the specific request of Mr. Richner in order to satisfy him that the new purchase price was acceptable to Interhandel's entire Board (219, 220).

Mr. Germann then testified with respect to the June 6th meeting:

> ". . . We declared to Mr. Richner and Mr. Wehrli—and if I say 'we', it was done by Mr. Felix Iselin and by Dr. Hans Sturzenegger—that it was our understanding that Remington Rand would endeavor according to their representations to have our assets in the United States released, and that if the following prerequisites would be fulfilled, namely, the Interhandel assets returned to us, all discrimination against Interhandel, its members of the Board, its main shareholders and where they are corporations their shareholders and members of their board, and if all the properties of these persons and entities were released, then Interhandel would be willing to accept an offer, which would be submitted in duly licensed form and which would provide for the following conditions,—the price to be 25 million dollars payable in Swiss francs converted at the official rate of exchange in Basle, or in gold ingots deliverable in Switzerland, probably to the Swiss National Bank.
>
> "This was the price. The goods to be sold by us was our entire General Aniline participation. And our willingness to do all this was subject to a time limit, during which all the prerequisites and the offer would have been submitted—would have to be submitted. And this time limit was fixed as of June 30th, 1946." (220, 221)

Dr. Sturzenegger, who also testified at the trial, was equally certain when questioned by appellant's trial counsel, as to the contents of the statement or offer made to Mr. Richner on June 6, 1946. This is shown by the following excerpts from the record:

"Q. Now, will you tell us what declarations were made to Mr. Richner regarding the attitude of Interhandel? A. The essence of it—I can not recall the phrases in which the exchanges were made, but the essence was that Interhandel would be prepared or would be ready to accept a certain offer made by interested American parties for the sale of the General Aniline & Film Corporation shares, provided such an offer would be made within a certain discussed time limit, and that before the end of the time limit, the essential conditions, or better, the prerequisites which were of the utmost importance to Interhandel, were fully filled.

"Q. Now, will you tell us what they were? A. The first prerequisites, which I think were always mentioned, were that the property of Interhandel in the United States must be freed and turned back after being freed, to be at the free disposal of Interhandel.

"Second, that all discrimination under which the Interhandel Company and the big stockholders of the company, and the members of the Board of the Company and the managers, were suffering, and that all and every discrimination of any sort as to any person or company, discrimination because of their relationship with Interhandel, must be removed, and when these three requisites, whereby the property of Interhandel does not mean only the shares, but the accounts also, the bank accounts and the dividends of some years, and the Interhandel stock vested by the Alien Property Custodian, and all the prerequisites were fulfilled before the time agreed upon and before the end of the time limit—if before the end of the time limit the American interested parties, whereby we can assure that the corporation would make a firm, binding offer to Interhandel at the agreed upon price, then that part of the understanding Interhandel would accept of such an offer, and that means would pass over to the Remington Rand Corporation participation in the General Aniline & Film Corporation at the price discussed before at $25,000,000, and it was the further understanding that the price in such a case had to be paid in Switzerland in gold or in cash. Maybe there were some other minor points which I do not recollect. They are small, but I think that is the substance. And as I am not sure whether I was able to make it clear with my somewhat primary English, I would like to emphasize once more all this undertook with Interhandel representatives that only after the

fulfillment of the mentioned prerequisites, would the offer of Remington Rand Company be accepted. That was a condition precedent.

"Q. Did I understand your last statement to be that it was only after the fulfillment of the conditions by Remington Rand that the offer would be accepted? A. Yes. I mean by this offer in the sense of our understanding, it would only be made by Remington Rand after the fulfillment of those aforementioned prerequisites. Only then would Interhandel have accepted such a binding offer to make the sale." (50, 51, 52)

Similarly, inquiry was made of Dr. Iselin as to the terms of the statement or offer made by Interhandel to Mr. Richner on June 6, 1946. He replied that he remembered the terms "quite well" and added:

"We told Mr. Richner that we are in no position now to make a contract with him re our participation in General Aniline and Film Corporation in New York; but that we were ready to accept an offer if, before all our claims and holdings in the United States, to wit, our holding in General Aniline and Film, our banking accounts, our claims, on unpaid dividends, our own Interhandel shares, which are in the United States, are released; and further, if discrimination of our corporation, of our members of the Board, of our manager, of all our affiliated corporations, and of the members of the Board of these corporations—if the discrimination of all these people and corporations is ended—in brief, if everything has been restored, then we are ready to accept an offer against payment of $25 million, payable in Switzerland, in Swiss francs, or in gold." (257)

Thus three of the four Interhandel representatives* who participated in the June 6, 1946, meeting with Mr. Richner and Dr. Wehrli were perfectly clear that all of the conditions had to be satisfied before the expiration date.

As for the Union Bank officials who acted for RemRand in this meeting, Mr. Richner and Dr. Ulrich Wehrli, the Joint Appendix contains all pertinent portions of their depositions. Nothing contained in their testimony even

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* The fourth representative, Mr. August Germann, did not testify. See footnote, p. 15, supra.

hints that the return of the vested property of Interhandel, the elimination of the discriminations and the tender of the purchase price could be effected after the termination date.

Mr. Richner did not even mention the subject. When Dr. Wehrli was asked about the time limits contained in the June 6, 1946, statement and whether "the possibility of fulfilling those conditions in that time" had been discussed with the representatives of Interhandel at that conference, he answered simply by saying: "I don't know." (155).*

It is self-evident that if Mr. Richner had understood that the conditions were not conditions precedent, inquiry would certainly have been made by RemRand's counsel and he would have so testified. His silence must be viewed as tacit approval of the testimony given by Mr. Germann, Dr. Sturzenegger and Dr. Iselin that all of the conditions set forth in Interhandel's oral statement or offer were prerequisites which had to be fulfilled before the date of termination and before RemRand could accept such offer.

Thus the best sources of proof of this disputed fact support the finding that these conditions were conditions precedent. No hint or innuendo to the contrary appears in the testimony of these witnesses. None of these conditions has been fulfilled, as is conceded by RemRand.**

3. The practicalities of business life show that the conditions were prerequisites to an acceptance.

The testimony of Mr. Germann, Dr. Sturzenegger and Dr. Iselin is strongly buttressed when the June 6, 1946, transaction is tested in the crucible of common sense. As a matter of business judgment it would be sheer folly for a company to bind itself irrevocably to sell its controlling interest in a concern in the United States at a fixed price

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* Dr. Ulrich Wehrli's lack of knowledge may be attributed to the fact that he acted merely as Mr. Richner's assistant (146, 148).

** See Mr. Burroughs' statement: "We don't contend, however, that the conditions which they [Interhandel] say were laid down, have been fulfilled." (286)

without specifying a date before which the sale would have to be consummated. The period during which the June 6, 1946, statement remained effective was a period of post-war adjustments when inflationary developments were not unanticipated and consumer demands were most uncertain.

Under RemRand's theory, the sale could take place at any time in the future—five, ten, fifteen or twenty years hence—whenever the vested GAF shares are returned to Interhandel. To protect itself on this score, RemRand took precautionary steps to prevent its being liable for the payment of the $25,000,000 purchase price at some indefinite date in the future when the GAF vested shares might have been less valuable than they were in 1946 and 1947. It formed a subsidiary, American Aniline & Chemical Company, Inc.,* and, after the cancellation notice of April 21, 1947, was sent by Interhandel (Int. Ex. 9, p. 325) RemRand did not accept the offer but assigned its alleged interest to its subsidiary on May 1, 1947 (Int. Ex. 23, pp. 367-368). Five days later, May 5, 1947, American Aniline & Chemical Co., not RemRand, purported to accept the offer. (Int. Ex. 10, 11, pp. 326-329).

To conclude that Interhandel intended to give RemRand the right to permit a subsidiary, practically devoid of assets,** to bind Interhandel to sell at $25,000,000 the vested GAF shares at some indeterminate date in the future necessitates attributing to Interhandel's officers and directors an utter lack of business sense. Nothing in the record justifies such an assumption.

Interhandel's position that the parties believed that the conditions set forth in the June 6, 1946, offer of Interhandel could be achieved by June 30, 1946, the original expiration date, which was later extended, is characterized as "a senseless contention on its face" (appellant's brief, p. 19).

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* The proposed option form named this subsidiary as the optionee. (Int. Ex. 52, p. 385).

** At that time, according to Mr. Rand, President of RemRand, American Aniline & Chemical Co. had assets of less than $10,000 (38-46).

It will be recalled, however, that the conditions set forth in the June 6, 1946, offer were (a) the elimination of discriminations, *i.e.*, removal from the U. S. Proclaimed List of Interhandel, its associated companies and individuals, and the release from freezing controls of the assets of such persons; (b) the return to Interhandel of the vested GAF shares and its bank accounts; and (c) the remittance by RemRand of the Swiss franc equivalent of $25,000,000, and the return of certain Interhandel shares.

A dispassionate examination of the facts demonstrates beyond cavil that it was indeed reasonable for the representatives of Interhandel and RemRand in early June to believe that these conditions could be satisfied by June 30, 1946. It is conceded by RemRand that the U.S. Proclaimed List was completely withdrawn on July 8, 1946. (appellant's brief, p. 69). Thus the elimination of this discrimination was effected eight days after the original expiration date of June 30. With RemRand's self-asserted intimate acquaintance with high officials of the United States Government, as Nemzek and others asserted,* RemRand's representatives in Switzerland must have known of the fact in early June that the withdrawal of the list was under active contemplation.

Moreover, the Swiss-Allied Accord is relevant to this point. It was effected by an exchange of letters of May 25, 1946, and was announced to the press by the Department of State in a press release of June 17, 1946, setting forth its contents and explaining its obectives. (14 State Dept. Bull. 1101, 1102; 1121-1124). In the letters dated May 25, 1946, the following statement appears:

"IV

"1. The Government of the United States will unblock Swiss assets in the United States. The necessary procedure will be determined without delay.

"2. The Allies will discontinue without delay the 'black lists' insofar as they concern Switzerland." (*Id.* at 1122).

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* See Nemzek's letter to Dr. Sturzenegger dated Dec. 21, 1946 (Pl. Ex. 1, p. 287) which shrieks, not speaks, for itself.

On its face this language is intended to include the return of vested property formerly owned by Swiss nationals as well as the unfreezing of all frozen Swiss property. Thus the return of the GAF vested shares and other property of Interhandel which the Swiss were satisfied was not enemy-owned would be included within this language as well as the defrosting of all Swiss assets frozen pursuant to the U.S. Trading With The Enemy Act.

Thus it is seen that it was entirely reasonable for the representatives of Interhandel to take at face value the representations of RemRand and to believe on June 6, 1946, that the elimination of all the discriminations and the return of the GAF vested shares and other property of Interhandel could well have been achieved by June 30, 1946. Naturally, to expect that RemRand would pay the purchase price in return for the GAF shares was reasonable.

Hence, instead of being "a senseless contention on its face", it has been shown that it was wholly reasonable to expect that the conditions would be fulfilled by June 30, 1946.

4. The option sought by RemRand in 1947 adds further support to Interhandel's position.

Early in 1947, Garey prepared a written form of option which he submitted to Mr. Wilson, Interhandel's counsel in the United States (111). The true nature of RemRand's rights can be seen from a closer analysis of the terms of this option and the negotiations concerning it. It was to procure the signing of this option that Shorten and Garey undertook their trip to Switzerland.* The option was never signed by Interhandel.**

It is self-evident that RemRand hoped to improve its position under the June 6, 1946 offer by securing the execution of the option form. Likewise, it is clear that it actually

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* Garey testified that he so informed the Interhandel representatives at the first meeting on March 10, 1947 (112), as well as the second on March 14, 1947. (125)

** Sturzenegger, Germann and Iselin so testified (56, 235, 267 respectively). RemRand does not challenge this.

possessed at the time of the March, 1947 negotiations something less than it would have obtained if the option had been executed.

After referring to Interhandel's interests in the General Aniline & Film Corporation and the vesting of such shares by the United States authorities in 1942, the option form* provides in Paragraph Third that the price shall be $25,000,000, or the Swiss franc equivalent.

Pursuant to Paragraph Fourth, RemRand could give notice to purchase the GAF shares,

> ". . . at any time prior to five o'clock p.m. (Eastern Standard Time, U.S.A.) on April 30, 1947, . . . and thereafter delivery of the shares optioned hereunder shall be made to the Optionee against payment of purchase price . . . at a time to be fixed by the Optionee in such notice, which time shall be not earlier than ten days nor later than thirty days after the date of the exercise of the option hereby granted. Time shall be deemed to be of the essence of this agreement." (387)

This paragraph clearly means that, if the option had been exercised on the last day, April 30, 1947, delivery of the GAF shares and payment of the $25,000,000 purchase price would have to be effected simultaneously on some day between May 10 and May 30, 1947, to be selected by RemRand.

In Paragraph Fifth it is specifically stated that Rem Rand's obligation to pay the purchase price "shall be subject to the following express conditions precedent . . . " (388). Four conditions are listed by letter, only the last two being relevant here. Subparagraph (c) reads:

> "That, at the time of delivery hereunder, the United States of America, or its Attorney General as Alien

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* Intervenor's Exhibit No. 52 (385 et seq.) is a proposed option between American Aniline & Chemical Co., a subsidiary of RemRand, and Interhandel (385). For purposes of simplification it will be assumed at this stage that RemRand, rather than American Aniline & Chemical Co., was the optionee. The draft option refers to Interhandel as Chemie. In this discussion we will use the term Interhandel in place of Chemie, except when quoting its terms, since we have used the term Interhandel throughout this brief.

> Property Custodian of the United States . . . shall have returned to Chemie [Interhandel] and placed it in possession of the shares of Common A and B stock aforesaid, [GAF vested shares] including all dividends or other distributions, whether in cash, stock, property or otherwise, declared paid or made by the Chemical Company [GAF] in respect of such shares subsequent to February 16, 1942." (388)

Subparagraph (d) reads:

> "That, at the time of delivery hereunder, the United States of America . . . shall have waived and released any and all interest or claim under the vesting orders aforesaid or otherwise in and to the shares optioned hereunder and the dividends and other distributions and avails aforesaid thereon." (388)

We therefore find that under the precise terms of Paragraph Fifth RemRand's obligation to pay the purchase price, if it exercised the option, was subject to the "express conditions precedent" that, prior to the settlement date, which in no event could be later than May 30, 1947, the GAF vested shares and dividends had been returned to Interhandel. Absent a return of the GAF shares and the dividends before the settlement date (May 30, 1947, at the latest), RemRand's obligation would have terminated.

As for the obligations which Interhandel would have assumed under the option, Paragraph Sixth reads:

> ". . . the obligations of Chemie [Interhandel] to deliver the optional shares [GAF shares] shall be subject, as express conditions precedent, to the conditions stated in subparagraphs (c) and (d) of Paragraph Fifth." (388)

As we have seen, subparagraphs (c) and (d) of Paragraph Fifth refer to the return by the United States Government to Interhandel of its GAF vested shares and other property. Therefore RemRand's exercise of the option would have imposed no obligation on Interhandel unless its vested GAF shares and other property were returned on or before the date of settlement which could in no event have been later than May 30, 1947.

The option form which Garey had drafted and submitted to Interhandel specified that the return by the United States authorities to Interhandel of the vested GAF shares and other property were "express conditions precedent" and unless they were returned before May 30, 1947, at the very latest, Interhandel would have assumed no obligations.

Garey's testimony leaves no room for doubt that he hoped that this option would be signed by Interhandel after Germann had returned from the United States on April 15, 1947 (110, 136), and that RemRand possessed something less than the rights provided for in the option form (110-137).

The fact that the option form specified the return of the vested shares as conditions precedent certainly confirms the testimony of Iselin, Sturzenegger and Germann that the conditions laid down in the oral statement of June 6, 1946 had to be fulfilled before RemRand could submit an acceptance of the offer.

5. The condition precedent theory was not an "afterthought."

RemRand takes the position that "this 'conditions precedent' contention of Interhandel is a complete afterthought, which was only conjured up by its adroit lawyers, 12 days after it had received the two cables of Acceptance of May 5, 1947." (appellant's brief, p. 17.)

In view of the analysis of the record which we have made above, it is readily apparent that appellant's assertion is directly contradicted by the testimony of the witnesses who participated in the June 6, 1946 meeting and by the acts and statements of both parties in relation to the option form.

Incidentally, the inarticulate major premise of RemRand's "after-thought" charge is that Interhandel has not acted consistently. This allegation, we submit, is unwarranted. On the other hand, the record shows that RemRand does not subscribe to the doctrine of consistency. For example, in the original complaint of intervention, no reference was made to the June 6, 1946, meeting, it merely being

alleged that on or before April 22, 1947, RemRand held an option (3). In the amended complaint of intervention, filed after the trial had been concluded, it is alleged, however, that a binding declaration was made by Interhandel to appellant on June 6, 1946 (6).

Yet RemRand's President, James H. Rand, testified that he knew of no option or other contract which was acquired from Interhandel until after December 23, 1946 (44).

In addition, the only other officer of RemRand who was a witness, Vice-President Shorten, testified that until 1947 he authorized no one, except a local law firm, Cummings and Stanley, to represent RemRand in connection with dealings with Interhandel (108, 110). And as late as October, 1946, Mr. Truitt, a member of the firm of Cummings and Stanley, was in agreement. In a letter dated October 18, 1946, (Pl. Ex. 8, p. 299) the U. S. Treasury Department requested Mr. Truitt to report whether there existed at that time any "options, contracts or other agreements between Remington Rand and I. G. Chemie [Interhandel]." (299, 301)

Truitt answered the Treasury Department in the following unequivocal language:

> "There are no presently existing options, contracts or other agreements between Remington Rand and I. G. Chemie [Interhandel]. Moreover, I do not agree that it appears from paragraph 6 of my letter that there may presently exist any such options, contracts or other agreements. My language in that paragraph was merely a comment on the proposal suggested by Assistant Attorney General Sonnett." (Pl. Ex. 9, pp. 302, 303)

Yet Garey, when he testified at the trial on February 27, 1950, maintained that RemRand had acquired an option from Interhandel in June, 1946 which had never lapsed (135).

Thus Rand and Shorten and Truitt, a member of the firm of Cummings and Stanley and RemRand's Washington counsel, on this fundamental issue of fact take a position inconsistent with that of Garey, RemRand's lawyer in New York, and of RemRand's trial counsel, who

prepared and filed the amended complaint of intervention. Cummings, Stanley, Truitt, and Cross, formerly known as Cummings and Stanley, were RemRand's counsel of record in the Court below.

Finally, one additional point should be mentioned at this stage. The record does not support RemRand's reliance on Interhandel's minutes to show that the conditions set forth in the June 6, 1946, offer were not conditions precedent. An examination of the minutes (334-365), rather than a reading of the subjective condensation of Interhandel's minutes by RemRand and RemRand's comments appearing as an exhibit to appellant's brief (p. 51), makes this readily apparent. In no place do the minutes directly or by inference state that the conditions could be satisfied at some indefinite date after acceptance.

For example, the minutes of the meeting of Interhandel's directors of May 18, 1946, refers to the resolution of readiness/willingness of Interhandel to sell all of its GAF shares, but immediately thereafter provides:

> "The following conditions are to be designated for this: . . ." (The conditions which have been described earlier in this brief are then set forth. (Int. Ex. 17AA, 336).)

Patently, the word "this" refers to the decision that it would be willing to sell the GAF shares. And in the final paragraph of these particular minutes it is stated that the Interhandel representatives "are instructed to transmit the above *proposals* to Generaldirektor Richner in the sense that we would be prepared to accept a licensed offer of purchase by the American interested parties *equipped with the above conditions, provided that it is made before 30th June, 1946 with absolute legal validity.*" (337) (Italics supplied) The use of the word "proposals" obviously meant declaration of readiness to sell, subject to fulfillment of the conditions and the phrase "it is made before 30th June 1946" obviously means an offer to buy by the American firm of Remington Rand, provided it had obtained a license to make such an offer from the United States authorities and had

succeeded in satisfying all of the conditions set forth in these minutes.

In addition, the minutes of the July 4, 1946 meeting and all subsequent meetings of Interhandel's Board show that the only changes made thereafter related to price and to the expiration date. Moreover, the proposed option* which had been drafted by RemRand and submitted by it to Interhandel in January specified that all of the conditions were conditions precedent, as we have shown above (pp. 23 et seq., supra). And the minutes of the January 16, 1947 meeting (Int. Ex. 17II, 347) state categorically that it had been resolved "unanimously to continue in our refusal to conclude an option agreement with Remington Rand, Inc." (348)

It should be remembered, moreover, that the burden of proof was and is on RemRand, not Interhandel, as the former was the intervenor below and the appellant here.

It follows that, pursuant to the offer, appellant's right to accept must have been subject to the fulfillment of all of the conditions prior to the termination date which became May 6, 1947, as a result of Interhandel's notice of April 21, 1947. (Int. Ex. 9, p. 325).

In view of this record, a finding that RemRand had sustained the burden of proving its case, which necessitated establishing the fact that the conditions were not conditions precedent, would have been clearly erroneous. It is therefore submitted that the District Court's finding on this point is supported by a preponderance of the evidence and may not be set aside, and that the judgment should be affirmed.

II.

Additional Points of Appellee.

1. Interhandel's oral statement was a "gentlemen's agreement" and gave rise to no enforceable rights.

Let us now examine the additional defenses. As for the significance under Swiss law of an offer being a gentlemen's agreement and the use of this term in referring to Interhandel's offer, the District Court found:

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* Int. Ex. 52. (385)

> "The expression 'gentlemen's agreement' in Swiss business practice means an agreement which the parties do not intend to be enforceable at law. The use of the term 'gentlemen's agreement' as applied to the offer discussed in paragraph 3 hereof* showed an intention of the offeror that the offer was not to be enforceable at law, and no enforceable rights could result under the Swiss law from the acceptance of such an offer." (Finding 7, p. 35)

From this finding it was concluded by the Court that "the offer and purported acceptance, being unenforceable under the law of Switzerland, where the offer was made, will not be enforced in this Court." (Conclusion 4, p. 36).

The above quoted finding is supported by the evidence; in fact there is no evidence to the contrary in the record.

As for the use of the term gentlemen's agreement in Swiss business practice and the legal effect under Swiss law of a gentlemen's agreement, proof was adduced by the appellee through the expert testimony of Dr. Edmund Wehrli, a lawyer who is engaged in active practice in Zurich, Switzerland (156, et seq.), and whose qualifications were not challenged.** This witness testified that under Swiss law an offeror may prevent an offer from being legally binding if the offeror "says that he will not be legally bound", or if "when a reservation is evident from the surrounding circumstances or from the nature of the whole dealing . . . or from the language used." (159).† When asked for examples of offers which would not be legally binding, he

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* Paragraph 3 of the Findings sets forth the terms and conditions of Interhandel's offer. (31, 32)

** It is axiomatic that foreign law must be proved as fact by duly authenticated copies of statutes and/or by expert testimony. 4 Wigmore, *Evidence* (3rd ed. 1940) § 1271; 2 Jones, *Evidence* § 502 (4th ed. 1938). See also Nussbaum, *The Problem of Proving Foreign Law,* 50 Yale L.J. 1018 (1941).

† This principle is expressly provided for in Article 7 of the Swiss Code of Obligations which was translated by Dr. Wehrli (159, 160). The Swiss Code of Obligations had been introduced into evidence earlier by appellant. See Int. Exs. 44 (R. 518, 520) and 45 (R. 519, 520).

replied: "A debt of honor . . . or a gentlemen's agreement." (160)

The witness then referred to a book published in 1947,* which he said was regarded as "authoritative among business men and lawyers," and which he would cite "as an authority" to a court in Switzerland (163). According to this book, a "gentleman's agreement" is one in which the parties bind themselves to a certain manner of conduct without giving this obligation a legally enforceable character. A violation of such an obligation, therefore, could not be legally prosecuted (166).

RemRand called two witnesses expert in the field of Swiss law, Dr. Schiess (92) and Dr. Jaeggi (99). The record contains not one word of testimony on their part in opposition to Dr. Wehrli's testimony on this subject. Swiss business practice and the legal effect of an offer being a gentlemen's agreement were therefore clearly established.

Judge Pine properly found that the June 6, 1946, offer was intended by Interhandel to be a gentlemen's agreement. Both Interhandel and RemRand so understood. As to this the record again is clear. Sturzenegger testified that the term was used "early, maybe from the beginning" (62). Iselin stated that Interhandel entered into the "gentlemen's agreement" with RemRand because the former was blocked by the Swiss and could not bind itself, other than morally, at the time of the offer and its renewals (271). He added that if the vested GAF shares had been returned to Interhandel no difficulties would have been encountered on its part in carrying out the gentlemen's agreement. For release of Interhandel's property in the United States would have resulted in the Swiss withdrawing their controls which were "only brought about by American pressure" (271).

Germann testified that from 1946 to 1947 the words "gentlemen's agreement" were used "frequently" in conferences with representatives of RemRand (243). Mr. Wilson, Interhandel's counsel in the United States, took the stand as a

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*Drs. Randolph J. Kaderli and Edwin Zimmerman, *Handbuch des Bank-Geld und Borsenwesens der Schweiz* (1947).

witness. In September, 1946, when he was in Switzerland and conferred with his clients and with Richner, Wehrli and Nemzek, he heard the term mentioned by Richner and by the Interhandel "people", his clients (280, 281).

Moreover, the term "gentlemen's agreement" appears in the March 17, 1947, and March 20, 1947, letters from Interhandel to Richner and to Shorten respectively. (Int. Exs. 29, p. 369, 370 and 8, p. 324). And Schiess' memorandum of April 9, 1947, delivered to Sturzenegger (72, 73), contains this statement:

> "Since June/July, 1946, there exists a gentlemen's agreement between Interhandel and Remington Rand with regard to the acquisition of Interhandel's participation in the General Aniline & Film Corporation. This gentlemen's agreement has been reconfirmed by a letter from Interhandel dated 18th March, 1947. It is still in force and can be terminated at the earliest at any time after 15th April, 1947, under observation of a period of notice of fourteen days." (Pl. Ex. 2A, pp. 289, 290)

Furthermore, RemRand's assignment to American Aniline & Chemical Company of May 1, 1947, conveys the former's rights "in and to a so-called 'gentlemen's agreement', partly written and partly oral, as supplemented, amended, modified and extended, from time to time . . ." (Int. Ex. 23, p. 367).

It is therefore undeniable that the phrase "gentlemen's agreement" meant the June 6, 1946, offer, as extended, and that the use of the term showed an intention of Interhandel that the offer was not to be enforceable.

2. Purported acceptance was void under Swiss law, due to Swiss blocking of Interhandel.

A further secondary defense is available to Interhandel, which was asserted at the trial and which met with the lower Court's approval. From October, 1945, until January, 1948, Interhandel was blocked by the Swiss authorities. Such blocking rendered invalid and unenforceable any contract during that period which obligated Interhandel to sell its GAF vested shares unless the consent of the Swiss

Compensation Office was obtained. No such consent was obtained. (Finding 9, pp. 35, 36).

The record clearly supports the lower Court's finding in this respect. The Swiss blocking laws were introduced in evidence.* Iselin testified that Interhandel was blocked from October 30, 1945, to January, 1948 (270). Sturzenegger stated that Interhandel was subjected to blocking by the Swiss authorities "during the whole period" beginning "at the end of 1945." (58). Germann identified communications from the Swiss Compensation Office of October and November, 1945, and the English translations thereof,** which blocked Interhandel (184-188). In addition, Edmund Wehrli observed that the letters constituted the official action of the Swiss authorities in blocking Interhandel and that the blocking continued from 1945 until 1948 (188, 189, 190, 191, 203, 204).

The effect of the Swiss blocking action was to render void any contracts Interhandel might make for the transfer of its GAF shares. According to Edmund Wehrli, any transaction involving blocked property would, under the Swiss blocking laws, be void (177, 178). If the transaction took the form of an option, it would still be void (178). He also added that in his opinion Interhandel could not, during the period of blocking, agree to sell its GAF shares without a license and that no license was obtained (203-204).

Additional expert testimony on this subject is also found in the record. Dr. Iselin, a lawyer of Basle, Switzerland (254), who had had a considerable amount of practice "in regard to blocking matters" (268), noted that, during the period of the Swiss blocking, Interhandel could not "enter lawfully . . . into a contract or option to sell its properties" which included its "General Aniline & Film stock" (270).

In the light of this evidence, the findings below that Interhandel was blocked and that this rendered the offer and purported acceptance unenforceable cannot be set aside.

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* Pl. Ex. 10 (R. 1171, 1172); Int. Ex. 46 (R. 515, 518).

** The English translations appear as Pl. Exs. 13A, 14B, 14C, pp. 304-307.

These findings alone also justify affirmance of the lower Court's dismissal of the complaint of intervention.

3. There was no effective acceptance of Interhandel's offer before the expiration date, May 6, 1947.

The District Court found that the offer was made to RemRand (Finding 3, p. 31), and that under Swiss law "an offer cannot be assigned." (Finding 8, p. 35). It concluded that the purported acceptance of American Aniline & Chemical Company was therefore ineffective (Conclusions 2 and 3, p. 36).

Interhandel's offer of June 6, 1946, was made to Mr. Richner and Ulrich Wehrli of the Union Bank of Switzerland as representatives of RemRand. RemRand does not contend that it accepted the offer before the final expiration date, May 6, 1947, nor that the offer could be assigned (286). It relies on the purported acceptance by one of its subsidiaries, American Aniline & Chemical Company, dated May 5, 1947 (Int. Exs. 10 and 11, pp. 326, 328). Its theory is that the offer was made to "the Remington Rand group"* which included appellant and American Aniline & Chemical Company, any member of which could accept the offer.

The fallacy of appellant's theory is readily demonstrated. American Aniline & Chemical Company was not in existence on June 6, 1946, not having been organized until October 2, 1946.** The record leaves no room for doubt that RemRand understood that the offer was made to it alone and not to it and a subsequently created subsidiary, AA&CC, with assets of less than $10,000, either of which could accept. This stands out in bold relief in view of the attempt by RemRand to assign its rights to AA&CC on May 1, 1947.

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* See Suggested Findings on Behalf of Intervenor (Nos. 3 and 4, pp. 27-28).

** Appellant's trial counsel corrected Mr. Rand's recollection and asserted that it was formed on October 2, 1946, under a different name, Amino Corporation, which was changed on December 19, 1946, to American Aniline & Chemical Company (39) which hereafter will be referred to as AA&CC.

(Int. Ex. 23, p. 367). If RemRand had considered that the offer ran to it and to A.A. & C.C., and that either could accept, it would have been wholly unnecessary to have executed such an assignment.*

In addition, it is significant that none of the representatives of RemRand who carried on the negotiations with Interhandel testified that the June 6, 1946, offer as extended was made to A.A. & C.C. In fact, Ulrich Wehrli stated categorically that at the June 6, 1946, meeting he and the Union Bank were representing RemRand (150). And the title of Dr. Schiess' memorandum of April 9, 1947, reads in part:

> "Remarks on the negotiations between the firm Remington Rand, Inc., New York, on one side, and Interhandel on the other." (Pl. Ex. 2A, p. 289).

Moreover, the opening paragraph of the memorandum starts out:

> "Since June/July 1946 there exists a gentlemen's agreement between Interhandel and Remington Rand with regard to the acquisition of Interhandel's participation in the General Aniline and Film Corporation." (*Id.* at 290).

The minutes of the meetings of the Board of Directors of Interhandel refer to negotiations with "Remington Rand, Inc." or "Remington Rand" or "Remington" or the "representatives" of this concern a total of 86 times. Only on ten occasions is the word "group" used. (334-365). And the significance of the use of the word "group" on these relatively rare occasions becomes non-existent unless read out of context.

For example, in the minutes of the meeting of the Interhandel Board of March 17, 1947 (Int. Ex. 17LL, p. 351, et

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* This flaw in appellant's theory is not cured by the belated concession by trial counsel in summation that the attempted assignment was a nullity (286). The controlling fact is the understanding of the parties whether the offer was made to A.A. & C.C. as well as RemRand, either of which was entitled to accept.

seq.) the term "Remington Rand, Inc." appears five times, the term "Remington" appears nine times—sometimes used in the phrase "representatives of Remington Rand", other times used in the phrase "Remington representatives" and at other times used alone. In contrast, the term "Remington group" is used only once.

Finally, the testimony of Interhandel's representatives makes it clear that they regarded the offer as being made only to RemRand.*

RemRand's assertion that the trial Court committed reversible error in its findings and conclusions on this point can only be characterized as absurd (appellant's brief, pp. 24-30). Two expert witnesses testified on behalf of RemRand as to the meaning of the word "group". One of them, Professor Jaeggi, said that the word "group" in German "has several senses" but "is not judicially a technical term. It is a word which is used in business language" (105). The Professor qualified only as an expert at Swiss law—not as an expert in Swiss business custom or language.

The other witness of RemRand, Dr. Schiess, stated that while he had "never taught German" he was "familiar with it [the word 'gruppe']." He then added that the word "has several meanings" and that its meaning "always depends in what connection or contact the word is used. If it is used with the name of a big firm, it means the firm, its subsidiaries and its affiliated corporations. If it is used in respect to a gathering of people, it means a plurality of persons, a gathering somewhere" (94, 95).

It has thus been demonstrated that RemRand not only failed to sustain the burden of proving the essential fact involved here but that Interhandel established that the offer

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* See Sturzenegger's testimony, *e.g.*, ". . . I remember quite well many discussions we had before with Mr. Richner, and we always understood Mr. Richner represented Remington Rand" (55); see also Germann's testimony, *e.g.*, "the meeting of June 6th, 1946, was attended on the side of the representatives of Remington Rand by Mr. Richner, and Mr. Ulrich Wehrli . . ." (220); see also Iselin's testimony where he was asked: "Was there any gentlemen's agreement on the part of Interhandel with anybody except Remington Rand?" and replied: "No." (267).

was made only to RemRand, and that A.A. & C.C. lacked the right to accept. Again, the findings and conclusions of the lower Court in this respect were indeed proper and on this point alone the judgment should be affirmed.

4. The offer and purported acceptance were null and void because no license or authorization had been obtained under the United States Trading With The Enemy Act.

Interhandel's final point is that RemRand obtained no license or authorization under the United States Trading With The Enemy Act* to acquire any interest from Interhandel in the vested GAF shares. The lower Court so found (Finding 10, p. 36) and concluded that under the Act the offer and purported acceptance were therefore null and void and unenforceable. (Conclusion 5, pp. 36-37).

On June 14, 1941, Executive Order No. 8389 was applied to Switzerland and resulted in freezing all property located in the United States owned by Swiss nationals.** Thereafter all "dealings in . . . evidences of indebtedness or evidences of ownership" or involving frozen property were prohibited except pursuant to license.† Interhandel was a Swiss national†† and therefore its GAF shares being property located in the United States became frozen in June, 1941. The order has not been rescinded, but remains in full force and effect.

General Ruling No. 12, issued pursuant to the aforementioned Executive Order provides that any prohibited transaction which is effected without a license is "null and void." This order was published April 21, 1942 (7 Fed. Reg. 2991).

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* Sec. 5(b) of the Act of October 6, 1917 (40 Stat. 415) as amended (U.S.C. Title 50, App. 5).

** The powers conferred on the President by Section 5(b) of the Act were invoked by the issuance of this order. It was originally issued on April 10, 1940 (5 Fed. Reg. 1400) and extended to Switzerland on June 14, 1941 (6 Fed. Reg. 2897).

† Exec. Order No. 8389, Sec. 1E (6 Fed. Reg. 2897).

†† As a corporation organized under the laws of Switzerland it fell within the definition of the term "national" appearing in Section 5E(i) of the Order.

Moreover the Supreme Court has held that an unlicensed transfer of frozen property does not pass title thereto. Propper v. Clark, 337 U.S. 472 (1949).* Thus, if there remained in Interhandel after the vesting of the GAF shares in 1942 property rights in the form of an equitable estate or interest, such rights were frozen and could not be transferred without a license. An attempt in 1946 or 1947 to do so without a license would be null and void and give rise to no enforceable rights.

The record is unmistakably clear that no license was issued. Pursuant to a letter from Treasury dated June 14, 1946, (Int. Ex. 1, p. 319) RemRand was authorized only to negotiate, and it was specified that it could not obtain any rights to the GAF shares. Treasury's letter of December 23, 1946 (Int. Ex. 3, p. 321), did not constitute a license or authorization. It merely concluded that no action by the Treasury was required, citing General Ruling No. 19 and General Licenses No. 94 and No. 95, issued pursuant to Executive Order No. 8389 (5 Fed. Reg. 1400).**

After the cessation of hostilities the lifting of freezing controls was accomplished by the use of General Licenses No. 94 (10 Fed. Reg. 14814) and General License No. 95 (10 Fed. Reg. 15414) which were made applicable to Switzerland on November 30, 1946. (11 Fed. Reg. 13959).

General License No. 94 released Swiss property in the

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* Lyon v. Singer, 339 U.S. 841 (1950), does not support a contrary position. In this decision, which was per curiam, the holding of *Propper* v. *Clark*, supra, was not overruled or limited, the Court pointing out that in the *Propper* case the claim was adverse to the claim of the Alien Property Custodian. In the case at bar, a claim adverse to the Custodian is asserted and this is challenged in the answer of the Attorney General (the successor to the Custodian). (20, 21). Therefore the *Propper* case and not *Lyon* v. *Singer* is controlling.

** That the letter did not constitute a license is clear from the answer of the Attorney General (the successor to the Alien Property Custodian) to the complaint of intervention. It is there alleged that appellant's purported agreement was void as no license or permission was obtained as required by various orders issued under the Act. (20, 21).

United States of persons who were on the effective date (November 30, 1946) not physically present in Switzerland or some other frozen country. This was not applicable to Interhandel, a corporation whose situs remained in Switzerland. As for property in the United States owned by persons located in Switzerland on November 30, 1946, General License No. 95 provided for the release of such property by the method of certification by the Swiss authorities.*

If on December 23, 1946, Treasury's controls were applicable to Interhandel's interests in the vested property, authorization to acquire from Interhandel any rights therein would have been obtained, not from the United States Treasury Department but pursuant to General License No. 95 from the Swiss authorities. No such authorization appears in the record.

In concluding that no action by Treasury was required, the letter may have meant that Treasury controls had been released to the Alien Property Custodian. Support for this interpretation is found in the fact that the letter referred to General Ruling No. 19, which was issued by the Treasury Department pursuant to Executive Order No. 8389 on December 6, 1945, and amended on August 2, 1946. (10 Fed. Reg. 14775; 11 Fed. Reg. 8350). Pursuant to this Ruling "all control . . . of any property or interest . . . vested by the Alien Property Custodian is hereby released to the Alien Property Custodian." Interhandel's GAF shares were vested in 1942 (6). If, as a result of the vesting action and of General Ruling 19, Treasury transferred to the Custodian all control over Interhandel's remaining interests, authorization to acquire any rights in such interests was still necessary. For General Order No. 31 of the Alien Property Custodian prohibited "all transactions involving any property, control of which has been released by the Secretary of the Treasury . . ." unless authorized by the

* These procedures are explained fully in an exchange of letters between the United States Secretary of Treasury Snyder and Dr. Petitpierre, Chief of the Swiss Political Department, both letters being dated November 22, 1946. (Pl. Ex. 26, pp. 311-319).

Custodian. (9 Fed. Reg. 7739). No authorization from the Custodian appears in the record.*

Thus it is seen that the agreement asserted by RemRand is void and unenforceable under the Trading With The Enemy Act. If Interhandel's interest remaining after the vesting was subject to Treasury control, authorization from the Swiss pursuant to General License No. 95 was required and none was obtained. If control over Interhandel's remaining interest was transferred to the Custodian by General Ruling 19, then the agreement was likewise prohibited by General Order No. 31, unless authorized by the Custodian and no such authorization was obtained. In either event, the alleged contract upon which RemRand bases its case is null and void and unenforceable under the United States Trading With The Enemy Act.

III.

Answer to RemRand's Contentions that the Court Below Erred in the Exclusion and Admission of Certain Evidence.

1. The Wehrli memorandum.

RemRand asserts that the ruling sustaining the objection to the Wehrli Memorandum constituted reversible error. (appellant's brief, pp. 32-37.) We submit that the Court below did not err in excluding this Memorandum.

RemRand failed to lay a proper foundation for admitting such patently hearsay evidence which would bring it within the Rule of Past Recollection Recorded. Both on principle** and under the rules controlling on the Court, it was essential clearly to establish that the witness after having read the Memorandum had no present recollection of the matter

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* On the contrary, the United States Attorney General, as successor to the Custodian, the defendant in the main case, filed an answer to RemRand's complaint (20). The answer alleges that RemRand's purported agreement is "illegal, void, prohibited and unenforceable", under the Act, Executive Order 8389 and General Order No. 31 of the Alien Property Custodian, for the reason that it was "a purported transfer of an interest in property without prior license or permission as [so] required." (20-21).

** See, for example, authorities such as 3 Jones, *Evidence* (4th ed. 1938) § 883.

covered therein before the Memorandum itself could be admitted in evidence. In fact, this has long been a rule of the Federal courts.*

The utter failure of appellant to lay a proper foundation for admitting the Wehrli Memorandum under the Past Recollection Recorded rule becomes amply apparent on an examination of the testimony of the witness. At least three times during his testimony the witness stated specifically that he recalled "in general" what was said by those present at the June 6, 1946 conference. (148, 149, 150) Moreover, at no time after the witness examined the letter did he state that it failed to refresh his recollection.

Under the circumstances it hardly seems necessary to allude to the further failure of RemRand to prove that the Memorandum satisfied other prerequisites to the invoking of the rule of Past Recollection Recorded. Nevertheless, it should be noted that the testimony and admissions extracted from the witness underscored the fact that the Memorandum was a composite of random notes taken down by the witness over many weeks (151, 152; R. 957) which were not finally reduced to connected written form until some date after the June 6, 1946, meeting, about which witness was likewise vague and indefinite (151, 152, 153). Thus it is inconceivable that RemRand could claim that the Memorandum should qualify for admission as a contemporaneous writing and routine business entry under accepted interpretations of the Federal Shopbook Rule.**

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* Vicksburg & Meridian R.R. v. O'Brien, 119 U.S. 99, 102 (1866); DeWitt v. Skinner, 232 Fed. 443, 444 (8th Cir. 1916); Stockyards Loan Co. v. Nichols, 260 Fed. 393, 394 (8th Cir. 1919); In re Messenger, 32 F. Supp. 490, 496 (E. D. Pa. 1940).

Even more important for the purposes of this case, of course, is the fact that courts in the District of Columbia for many years have consistently followed this rule. Gurley v. MacLennan, 17 App. D. C. 170, 180 (1900); Sechrist v. Atkinson, 31 App. D. C. 1 (1908); Rudd v. Buxton, 41 App. D. C. 353, 359 (1914); DuPerow v. Groomes, 42 App. D. C. 287, 290 (1914); Gunning v. Cooley, 58 App. D. C. 304, 306, 30 F. (2d) 467, 469 (D.C. Cir. 1929,) *aff'd.* 281 U.S. 90 (1930); Stone v. Metzler, 68 App. D. C. 359, 360, 98 F. (2d) 231, 232 (D.C. Cir. 1938).

** See for example, Palmer v. Hoffman, 318 U.S. 109, 113-115 (1943), and New York Life Ins. Co. v. Taylor, 79 App. D. C. 66, 72, 75, 147 F. (2d) 297, 303, 306 (D.C. Cir. 1945).

Finally, it is of paramount importance to note that the exclusion of the Wehrli Memorandum could not in any event constitute reversible error. Assuming, *arguendo*, that the Memorandum had been improperly excluded, RemRand is not justified in claiming that it was prejudiced to the slightest extent by its exclusion. For the Memorandum was presented to Dr. Sturzenegger while he was on the stand, having been called as an adverse witness by RemRand (47), and he was required to translate the memorandum in its entirety from German into English (58, et seq.). Moreover, the record shows that Mr. Richner testified that the Memorandum was "an accurate" and "a true statement" of what was said to him and Dr. Wehrli at the June 6, 1946, meeting "to the very best of" Mr. Richner's "recollection". (147)

In brief, therefore, the Court did not commit reversible error by excluding the Wehrli Memorandum.

2. The Archibald testimony.

RemRand contends that the exclusion of a portion of Archibald's testimony constituted reversible error (appellant's brief, pp. 37-40).

It is readily apparent that the District Court did not commit reversible error in excluding this portion of Archibald's testimony. As will be shown below, the exclusion of one sentence of Mr. Archibald's testimony was appropriate, as it stated a conclusion of the witness and was not responsive to the question. Moreover, even if the Court was in error, certainly it was not prejudicial to RemRand, for precisely the same point was made in narrative form by Archibald and appears in the record. In cross-examination Archibald was asked whether "Interhandel took the position that before they would accept any offer that Remington Rand might make, these conditions [the conditions precedent], must all be fulfilled". To this he replied: "My testimony is that before the deal could go through, these conditions had to be fulfilled" (144).

On redirect, Archibald was asked what he meant by the phrase "before the deal could go through" and replied: "I mean that when we accepted the offer we had to bind

ourselves to carry out the conditions of the declaration of June 6th at some time in the future" (145).

Thus it is seen that testimony of Archibald was admitted which was precisely to the same effect as his statement which was stricken pursuant to the motion.* Hence, even if the District Judge did err in his ruling, it was not prejudicial to RemRand and therefore did not constitute reversible error.

With respect to the correctness of Judge Pine's ruling in granting the motion to strike on the grounds that Archibald's earlier statement was a conclusion, it is axiomatic that a witness must confine himself to facts and not volunteer personal opinions or conclusions as to one of the issues involved. Archibald violated this basic tenet in the clause which was stricken, as he stated a conclusion as to what took place at the July 19, 1946 meeting. As he stated a conclusion and not facts in respect to the basic issue whether the conditions had to be satisfied before the expiration date, in this respect Archibald attempted to usurp the function of the Court.

By seizing upon the word "agreed" and referring to some isolated instances where similar language was not regarded as the conclusion of a witness, RemRand does not support its contention. Many other instances have been found where a Court felt that the use of the word "agreed" or similar words in somewhat analogous circumstances constituted a conclusion by the witness, and thus required exclusion of that particular testimony.** Accordingly, the Court below ruled properly when it granted the motion to strike.

Furthermore, another basis for granting the motion was that the answer was not responsive to the question. The

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* It will be recalled that the only clause excluded about which RemRand objects was: ". . . and, they [Interhandel] agreed with us [RemRand] that all we had to do within the time limit was to bind ourselves to carry out these conditions at a future date". (142) A repetition of this same thought would certainly not add weight to the point he was endeavoring to make.

** See, *e.g.*, Perren v. Baker Hotel of Dallas, 228 S.W. 2d 311, 317 (Tex. Civ. App. 1950); Strand v. Bleakley, 214 Iowa 1116, 243 N.W. 306 (1932).

soundness of this objection becomes apparent on a mere reading of the question and answer involved.*

Moreover, the objections to Archibald's testimony referred to its competency, relevancy and materiality rather than to mere form. Thus appellant's contention that the objections were waived under Rule 32(c)(2) is nothing more than another attempt to mislead this Court since that rule is addressed only to objections as to form.**

3. The Whiteford testimony.

Let us now examine the final evidentiary point which appellant asserts constitutes reversible error. RemRand contends that Roger Whiteford's testimony, concerning those portions of his conversation with Rand in February, 1947, with respect to Rand's allegations that high government officials wanted him to obtain the GAF vested shares, should not have been admitted and that the motion to strike this testimony should have been granted (appellant's brief, pp. 40-42). Moreover, appellant in this section of its brief continues and undertakes "the unpleasant duty" which it felt "must be performed" and calls attention to Section 19 of the Canon of Ethics of the American Bar Association. In quoting from Canon 19 appellant omitted the first sentence.†

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* Archibald was asked: "What did the gentlemen from Interhandel say to you . . . and what did you say to them . . . about the details and the execution of the option . . .?" (141) The witness replied: "That we could not within the time limit set in the declaration carry out all of the conditions stipulated, and they agreed with us that all we had to do within the time limit was to bind ourselves to carry out these conditions at a future date" (142). The second clause of this answer, beginning with "and they agreed" was stricken.

** Appellant instead has chosen to divert attention from Rule 32(c)(1) which governs here and specifically provides that objections as to competency, materiality and relevancy are not waived if not made at the time when a deposition is taken. See Detective Comics, Inc. v. Fawcett Publications, Inc., 4 F.R.D. 237, 8 F.R. Serv. 32 c. 1, Case 1 (S.D.N.Y. 1944).

† The entire Canon is as follows: "When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the

On December 30, 1949 Mr. Wilson stated at a hearing before Judge Pine that Mr. Spencer Gordon and Mr. Donald Hiss had "consented to come into the case with us to try the Remington Rand intervention on behalf of the plaintiff [Interhandel]".* Mr. Gordon and Mr. Hiss, connected with a different firm from Whiteford, Hart, Carmody and Wilson, thereafter acted as chief counsel and trial counsel in the intervention proceeding. The members of the firm of Whiteford, Hart, Carmody and Wilson could not have withdrawn from the case without grave injustice to their client, in view of their extensive preparation of the main case. Necessarily they had to cooperate and advise in the conduct of the intervention proceeding for the trial of which they secured independent counsel. Under such circumstances, Whiteford's appearance as a witness is open to no legitimate criticism.

Such a course was suggested in *Callas* v. *Independent Taxi Owners Ass'n,* 62 App. D. C. 212, 66 F. 2d 192 (D. C. Cir. 1933) and approved in Opinion 220 of the Committee on Professional Ethics and Grievances of the American Bar Association, dated July 12, 1941.**

It is cavilling to contend that, because Whiteford was to be a witness in this intervention proceeding, it was necessary for his firm to withdraw from the main case. Nothing less than withdrawal from the entire case would have avoided the captious objection raised by appellant.†

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trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client."

* The transcript of this hearing is not included in the record on appeal but is on file in the District Court.

** In French v. Hall, 119 U.S. 152 (1886) the Supreme Court held that it was reversible error to exclude the testimony of plaintiff's sole attorney as to what the defendant had told the attorney. See also 6 Wigmore, *Evidence* (3d ed., 1940) § 1911, and cases there cited.

† In passing it is noted that Garey, RemRand's lawyer "for the past fifteen or more years" (111), Archibald, RemRand's lawyer in Paris "for more than twenty years" (137, R. 822), and Dr. Schiess, a Swiss lawyer, who has represented appellant since June, 1946 (73, 74), were called as witnesses and testified on behalf of RemRand.

With respect to the conversation between Whiteford and Rand in February, 1947, it is stated in appellant's brief that the questions asked him referring to "the attitude of some of our Government officials towards RemRand acquiring the GAF stock . . . was not a material issue" in the proceedings below; that the "only purpose of Mr. Whiteford's testimony was the attempted impeachment of Mr. Rand's version of their conversation"; and that Whiteford did not confine himself to this area "but was permitted to vilify, slander and defame Mr. Rand. The vituperative and undignified epithets which he [Whiteford] put into the record were highly improper. Their only purpose was to smear RemRand and its President". The failure of the Court to grant a motion to strike this testimony is alleged to constitute "prejudicial error" (appellant's brief, pp. 40, 41).

Let us examine the record to determine the facts. In Paragraph 5 of Interhandel's answer it is specifically denied "that the intervener [RemRand] has ever had an option granted to it by the plaintiff [Interhandel]" (9). Paragraph 8(f) of Interhandel's answer reads:

> "The purported option asserted by the intervener [RemRand] is against public policy and void and unenforceable because any consideration therefor consisted of a promise to influence officials of the United States Government" (18).

Thus the record shows that Interhandel raised the defense (a) that there was never an option granted to RemRand, and the further defense (b) that if such an option had been granted it was against public policy and therefore unenforceable because it was induced by assertions that RemRand had influence with officials of the United States Government who would in response to such influence return the vested GAF shares and eliminate the discriminations.

Whiteford's testimony that Rand requested him to recommend to Interhandel that RemRand be given an op-

tion was material to the first defense mentioned above.* This is undeniable, inasmuch as RemRand's amended complaint of intervention alleges that the offer or option had existed since June 6, 1946, and the conversation between Whiteford and Rand took place in February, 1947 at the instigation of former Attorney General Homer Cummings who was representing RemRand (273). If RemRand had had an option since June 6, 1946, there would have been no possible reason for Rand to have made his request to Whiteford.

As for the second defense, that the purported option was unenforceable because it was induced by assertions that RemRand had influence with United States Government officials, it should be noted that this defense was originally founded primarily on a letter which Leo P. Nemzek, Vice President of RemRand, had written to Dr. Sturzenegger on December 21, 1946 (Pl. Ex. 1, pp. 287, 288, 289) which had been made available to Interhandel's counsel in the course of pretrial depositions before the answer was filed.

In the course of preparing the case for trial, the late Spencer Gordon, a senior partner of the Covington, Burling, Rublee, O'Brian & Shorb firm, and a lawyer whose reputation for integrity and veracity has been equalled perhaps but never surpassed in the courts of the District of Columbia, discussed the case with Whiteford. This was only natural, for Whiteford, together with his partner, John Wilson, acted as American counsel for Interhandel. During this discussion Gordon learned of Whiteford's conversation with Rand in February, 1947. Gordon *asked* Whiteford to testify and the latter replied that he would do so if he could give material evidence. Under these circumstances, resort to the subpoena power, which was available to Gordon, would have been a subterfuge and intellectually dishonest. Gordon and Whiteford were aware of this situation.

In view of the Nemzek letter, and of Rand's February, 1947 statements to Whiteford, Gordon was led to conclude

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* Rand admitted that he made such a request of Whiteford at the meeting in February, 1947 (R. 217).

that the improper influence defense was valid, within the principle enunciated in *Moffett* v. *Arabian-American Oil Company, Inc.*, 85 F. Supp. 174 (S.D.N.Y. 1949), and cases cited therein.

Thus Whiteford's testimony was indeed material, bearing directly on these two defenses asserted by Interhandel in its answer. As for the contention that Whiteford vilified, slandered and defamed Rand, we think the record speaks for itself.

CONCLUSION

We have attempted to present this case in an affirmative manner even though we are appellee. Such a procedure has been necessary in view of appellant's failure to state the case affirmatively.

To some extent we have corrected what we believe are errors appearing in appellant's brief. Space, however, has not permitted us to take issue with all of the misstatements of fact or to distinguish all of the decisions stated in the brief of RemRand. Silence on our part, however, should not be deemed an indication of agreement with any statement therein.

We pray that the judgment of the Court below be affirmed.

Respectfully submitted,

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No. 10,739

In the United States Court of Appeals for the District of Columbia Circuit

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REMINGTON RAND INC., *Appellant*,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A. ETC. (I. G. CHEMIE) (INTERHANDEL), *Appellee*

and

J. HOWARD MCGRATH, Attorney General of the United States as Successor to the Alien Property Custodian, and GEORGIA NEESE CLARK, Treasurer of the United States, *Appellees*

BRIEF FOR THE ATTORNEY GENERAL AND THE TREASURER OF THE UNITED STATES

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Assistant Attorney General,

GEORGE B. SEARLS,
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Attorneys for Appellees.

QUESTIONS PRESENTED

1. Whether the District Court's finding that no contract was consummated between Remington Rand (appellant) and I. G. Chemie (appellee) is clearly erroneous.

2. If so, whether Remington Rand is entitled to the injunctive relief prayed in its Complaint of Intervention.

INDEX

CASES:

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BRIEF FOR THE ATTORNEY GENERAL AND THE TREASURER OF THE UNITED STATES

STATEMENT OF THE CASE

The principal action out of which this appeal arises was brought by Societe Internationale, etc. (I. G. Chemie), a Swiss corporation, pursuant to Section 9(a) of the Trading With the Enemy Act (40 Stat. 411, 50 U. S. C. App. § 9(a)). The complaint, filed in October 1948, seeks the return, among other things, of some 90% of the stock of the General Aniline & Film (GAF) Corporation (a Delaware corporation), which stock was vested in 1942 and is held by the United States as enemy property (App. 5-6). The issue between I. G. Chemie and the Government is whether Chemie is free of enemy taint and entitled to a return under the Act.

On October 18, 1949, by leave of court, Remington Rand filed a Complaint of Intervention, alleging that in 1947 it had acquired an option from I. G. Chemie to purchase on certain terms and conditions the vested GAF stock if and when Chemie prevailed in its 9(a) suit (App. 2-5). An amended complaint was filed by the intervenor on April 17, 1950 (App. 5-8). As relief Remington Rand demanded that I. G. Chemie "be restrained and enjoined from disposing of any right, title or interest" in the vested stock pending further order of the court (App. 7). It also prayed that if Chemie should ultimately prevail in its 9(a) suit, Remington Rand should have a declaratory judgment to the effect that it may purchase the GAF stock in accordance with the terms of the alleged option contract (App. 7). The Government's answer to the Complaint of Intervention (App. 20-24) was filed on January 24, 1950 and Chemie's answer (App. 8-19) on January 28, 1950. These pleadings were adopted by reference in answer to the amended complaint (App. 25-26).

On October 25, 1949, the Attorney General moved for a declaratory order "adjudging that defendants and plaintiff are entitled to settle this action regardless of any right which the intervenor has or asserts to the contrary" (App. 393). On December 21, 1949, the District Court entered an order denying the Government's motion for declaratory relief (App. 394). A motion for reconsideration was denied on January 18, 1950 (App. 398). An appeal was duly taken (No. 10,650) but dismissed by this Court on October 30, 1950, on the ground that the order appealed from was interlocutory.

At the same time that it denied the declaratory relief prayed, the District Court set down for prompt determination the issue of Remington Rand's asserted rights against Chemie (App. 396). After extended trial on that issue, the court found that in fact no option contract was consummated between the two firms (App. 30-37). Judgment dismissing the intervenor's complaint was accordingly entered on April 6, 1950 (App. 37-38). Notice of Appeal was filed by Remington Rand on June 23, 1950.

ARGUMENT

Point I. The Finding That No Contract Was Consummated Between Remington Rand and I. G. Chemie Has Substantial Support in the Record.

The Government did not actively participate in the trial of the issue raised by Remington Rand's appeal and we shall not comment here at any length upon the evidence offered with respect to the Rand-Chemie negotiations, particularly since that evidence is discussed extensively in the briefs of the other parties. It is believed appropriate to observe, however, that, while there is some conflict in the evidence, there appears to be very substantial support in the record for the finding of the District Judge that no contract was consummated by the oral negotiations of the two firms. This determination rests largely, of course, upon the intent of the parties as revealed and explained by the acts and testimony of their agents. In such circumstances it is clear that the finding of the trial judge, who saw and heard the witnesses, is entitled to great weight. As Judge Learned Hand has stated, where a witness's intent is in issue the finding of the trial judge is "unassailable except in the most exceptional cases", *United States* v. *Aluminum Company of America*, 148 F. 2d 416, 433 (C. A. 2).

Point II. Even If This Court Should Reverse the Finding of the District Court, It Should Hold That Remington Rand Is Not Entitled to the Injunctive Relief Demanded in Its Complaint of Intervention.

This Point in our brief will become relevant only if the Court should hold, contrary to the finding below, that Remington Rand acquired option rights *vis-a-vis* Chemie. Making that assumption for purposes of argument, it is our belief that Remington Rand is not entitled, in any event, to the injunctive relief demanded by its Complaint of Intervention.

Clearly, if this Court should hold that Remington Rand has standing in the present litigation as a result of its alleged contract with Chemie, the Court may also determine the character of Remington Rand's rights, in particular,

whether they are of such possible scope as to entitle it to enjoin a settlement of Chemie's suit under the Trading With the Enemy Act. We would stress in this connection that there has been a full trial on all of the allegations made by the intervenor and that, so far as its cause of action is concerned, all of the proof is in. The scope of its rights (if any) in the triangular controversy may be fully determined at this juncture.[1]

Intervenor demands in its first prayer for relief that "the plaintiff be restrained and enjoined from disposing of any right, title or interest in and to the [vested] stock" (App. 7). At the outset, it is to be noted that Remington Rand makes no claim whatever to the vested stock as against the Government.[2] Indeed, the allegations of its complaint make it perfectly plain that it could not assert such a claim. The GAF stock was vested in the United States in 1942 and the only basis upon which Remington Rand asserts any interest in the outcome of the litigation is a purported option contract with Chemie allegedly consummated in 1947. The 1942 vesting conferred absolute title upon the United States. *Cummings* v. *Deutsche Bank,* 300 U. S. 115; *The Antoinetta,* 153 F. 2d 138 (C. A. 3). By issuance of the order, the Custodian succeeded immediately to all rights in the property "as completely as though by conveyance, transfer or assignment", *Commercial Trust Co.* v. *Miller,* 262 U. S. 51, 56. Thereafter, Chemie had no subsisting interest in the property, nothing left to assign. *Ibid.* Cf. *Societe Suisse* v. *Cummings,* 69 App. D. C. 154, 99 F. 2d 387, cert. den. 306 U. S. 631.

Since the initial seizure conferred absolute title upon the United States, extinguishing all prior interests, it is plain that Chemie's only right in relation to the vested property is the bare right to sue for recovery under Section 9(a),

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[1] The situation is entirely different from that in No. 10,650 where the appeal was dismissed as having been taken from an interlocutory order. The present appeal is from a final judgment determining Remington Rand's rights. Here, certainly, if Remington Rand is found to have any rights, their scope may be defined.

[2] As stated above, it asserts an option to purchase from Chemie if and when Chemie prevails in its 9(a) suit.

which provides the exclusive remedy under the Act. *Clark* v. *Uebersee Finanz Korp. A. G.*, 332 U. S. 480; *Stoehr* v. *Wallace*, 255 U. S. 239; *Zander* v. *McGrath*, 177 F. 2d 649 (C. A. D. C.). If Remington Rand's demand that Chemie be enjoined from disposing of its rights in and to the stock means anything, it must be taken as a demand that Chemie be enjoined from withdrawing, compromising or settling its 9(a) action. Remington Rand has avowed that to be its aim (App. 394-396). It would have the Court imply from the alleged option contract an obligation by Chemie to prosecute the 9(a) suit and it would have the Court exercise its injunctive powers to compel Chemie to persist in litigating the claim it has filed against the United States. Whatever basis there may be for Remington Rand's appearing at all as a party in this 9(a) litigation, it certainly has no right to such relief. Equity will not enforce a promise (even if one could be inferred here) to refrain from settling litigation. Beyond that, it is clear that the Assignment of Claims Act (35 Stat. 411, 31 U. S. C. § 203) precludes enforcement of a promise made to a third party to litigate a claim against the United States.

The law favors the settlement and the non-acrimonious disposition of lawsuits. The cases are legion which hold that contracts limiting or denying the right of a suitor to settle are void and unenforceable as against public policy.[3] A case which presents a striking parallel to the one at bar is *Mulready* v. *Pheeny*, 252 Mass. 379, 148 N. E. 132. The

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[3] E.g., *Kendall* v. *United States*, 74 U. S. 113; *Jones* v. *Pettingill*, 245 Fed. 269 (C. A. 1), cert. den. 245 U. S. 663; *Davis* v. *Webber*, 66 Ark. 190, 49 S. W. 822; *Nichols* v. *Orr*, 63 Colo. 333, 166 Pac. 561; *North Chicago St. Ry. Co.* v. *Ackley*, 171 Ill. 100, 49 N. E. 222; *Kauffman* v. *Phillips*, 154 Iowa 542, 134 N. W. 575; *Kansas City Elevated Ry. Co.* v. *Service*, 77 Kan 316, 94 Pac. 262; *Proctor* v. *Louisville & N. R. Co.*, 192 Ky. 330, 233 S. W. 736; *Pittsburgh, C. C. & St. L. Ry. Co.* v. *Carmody*, 188 Ky. 588, 222 S. W. 1070; *Louisville Ry. Co.* v. *Burke*, 149 Ky. 437, 149 S. W. 865; *Mulready* v. *Pheeny*, 252 Mass. 379, 148 N. E. 132; *Davis & Michel* v. *Great Northern R. Co.*, 128 Minn. 354, 151 N. W. 128; *Burho* v. *Carmichael*, 117 Minn. 211, 135 N. W. 386; *Boogren* v. *St. Paul City R. Co.*, 97 Minn. 51, 106 N. W. 104; *Weller* v. *Jersey City H. & P. Ry. Co.*, 68 N. J. Eq. 659, 61 Atl. 459; *Andrewes* v. *Haas*, 214 N. Y. 255, 108 N. E. 423; *In re Snyder*, 190 N. Y. 66, 82 N. E. 742; *Davy* v. *Fidelity & Casualty Ins. Co.*, 78 Ohio St. 256, 85 N. E. 504; *Butler* v. *Young*, 121 W. Va. 176, 2 S. E. 2d 250.

suit there, also, was for the return of stock (which plaintiff, allegedly, had been fraudulently induced to sell to defendant). Prior to filing suit the plaintiff had contracted to sell the stock to a third person (one Meagher), if and when it was recovered. After the suit was filed, plaintiff learned that in fact no fraud had been committed and that her suit was groundless. Accordingly she sought to dismiss the complaint on the merits. But Meagher intervened to object, claiming that he had a binding contract for the purchase of the stock if and when plaintiff recovered it, that this contract obliged plaintiff to prosecute her cause of action, and that her obligation to do so could be specifically enforced. Declaring that Massachusetts law forbade the assignment of a cause of action for fraud, the court concluded that it would be contrary to fundamental principles of equity to allow a third party to become master of the cause of action and to compel the plaintiff, against her will, to prosecute her suit.

In the *Mulready* case, it was held that Massachusetts law forbade the assignment of the plaintiff's cause of action. It is equally plain that under the Assignment of Claims Act, Chemie could not have assigned its 9(a) action to Remington Rand. That statute explicitly provides:

> All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor . . . shall be absolutely null and void, unless they are freely made and executed . . . after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

"It would seem to be impossible to use language more comprehensive than this . . . It strikes at every derivative interest, in whatever form acquired, and incapacitates every claimant upon the Government from creating an interest in the claim in any other than himself", *Spofford* v. *Kirk*, 97 U. S. 484, 488.[4] Remington Rand cannot accomplish indi-

[4] The statute, of course, embraces claims under the Trading With the Enemy Act. *Sturchler* v. *Hicks*, 17 F. 2d 321 (E. D. N. Y.).

rectly what it is forbidden from doing directly. Since it is prohibited from taking Chemie's claim against the Government by way of assignment, it cannot become *dominus litis* and insist that that claim be pursued in the courts for its benefit, irrespective of the wishes of the claimant. Remington Rand's object is to preclude the possibility of a negotiated settlement of Chemie's claim against the Government. That it cannot do. The statute's "obvious purpose . . . was to forbid anyone who was a stranger to the original transaction to come between the claimant and the Government", *Nutt* v. *Knut*, 200 U. S. 12, 20. As stated in *Goodman* v. *Niblick*, 102 U. S. 556, 560, the two chief mischiefs at which the Act aimed were:

> First, the danger that the rights of the government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction.
>
> Second, that by a transfer of such a claim against the government to one or more persons not originally interested in it, the way might be conveniently opened to such improper influences in prosecuting the claim before the departments, the courts, or the Congress, as desperate cases, when the reward is contingent on success, so often suggest.

And see also *National Bank of Commerce* v. *Downie*, 218 U. S. 345; *United States* v. *Crain*, 151 F. 2d 606 (C. A. 8), cert. den. 327 U. S. 792; *Sherwood* v. *United States*, 112 F. 2d 587 (C. A. 2), reversed on other grounds, 312 U. S. 584; *Ozanic* v. *United States*, 83 F. Supp. 4 (S. D. N. Y.); *Roomberg* v. *United States*, 40 F. Supp. 621 (E. D. Pa.).

CONCLUSION

The judgment of the District Court dismissing the Complaint of Intervention should be affirmed. In the event that the judgment is reversed, however, this Court should hold that appellant is not entitled to the injunction demanded by its first prayer for relief.

Respectfully submitted,

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,739

REMINGTON RAND INC., *Appellant,*

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A. ETC. (I. G. CHEMIE) (INTERHANDEL), *Appellee,*

and

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, AND GEORGIA NEESE CLARK, TREASURER OF THE UNITED STATES, *Appellees.*

REPLY BRIEF FOR REMINGTON RAND, INC., APPELLANT.

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INDEX TO REPLY BRIEF.

CITATIONS.

CASES:

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J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., *Appellees.*

REPLY BRIEF FOR REMINGTON RAND, INC., APPELLANT.

I.

REPLY TO THE GOVERNMENT'S BRIEF.

At the opening of its argument the Government states that it did not "actively participate in the trial of the issue" involved in this appeal. While that statement is literally true, this Court should be advised of the compelling part which the Government took in bringing about the trial Court's order severing the intervening petition and setting it down for an immediate hearing. In the first place counsel misrepresented to the trial Court that the property involved was "perishable" and was likely to suffer "great damage" and was subject to "deterioration or loss", (App. 396) when, as a matter of fact, it has steadily increased in value during the past two years.[1] Second, counsel told the Court that the Intervenor's petition interfered "with the Government's program," (App. 396) (we assume by this they meant their plan to Americanize GAF) and that the existence of the Intervenor's petition prevented a settlement of the case between the Government and Interhandel regardless of the rights of RemRand.

If the Government had seen fit to remain on the side lines on this appeal, as it did at the actual trial of the issues in the District Court, its conduct in the Court below, preliminary to the trial of the issues, would have been passed over by us without comment. But inasmuch as the Government has seen fit to file a Brief in this Court asking that the judgment below "be affirmed", we deem it necessary to call the Court's attention to the following points: *first,* to the fact that in a Section 9(a) proceeding where the right to intervene has been granted to a third party, it is the duty of

---

[1] This "deterioration" charge (App. 396) which impelled the Trial Court to grant a separate trial of RemRand's Intervention Complaint, was of course absurd and even false on its face. When the Custodian in the summer of 1946 was asked about the extent of "deterioration" of Alien Property held by his office, he was forced to answer: "None except by lapse of time, such as patents." See House Judiciary Committee Hearings on H. R. 5089, 79th Congress, 2nd Sess. The net earnings, after taxes, as per the annual report to stockholders of GAF for the year ending December 31, 1949, were approximately $2,800,000. The net earnings after taxes for the year ending December 31, 1950 will be approximately $7,000,000, according to current press reports.

the Government "to retain" the property "until final judgment or decree shall be entered * * * or until suit is otherwise terminated"; and *second,* to the misrepresentations which the Government made to the Trial Court.

The Government's Argument. The Government's "Point I", (p. 3) first quotes from Judge Learned Hand's opinion in the well-known *Aluminum* Case (148 F. 2d, 416) to the effect that the findings of a Trial Court are "unassailable except in the most exceptional cases." Judge Hand used the seven words in his opinion quoted in the Government's Brief. But his language was as follows:

> "* * * and in so far as his (the trial Judge's) findings depend on whether they (the witnesses) spoke the truth, the accepted rule is that they (the findings) must be treated as unassailable. * * * and upon an issue like the witness's own intent, *as to which he alone can testify,* the finding is indeed 'unassailable' *except* in the most exceptional cases." (Italics added).

The particular question with which Judge Hand was there concerned involved intent to violate the Anti-trust laws, not the intent of parties negotiating a contract.

We conclude our comment about the Government's First Point concerning the "unassailable" effect of the Trial Court's findings in the case at bar, by pointing out that the Court of Appeals did not hesitate in the *Aluminum Case* to review for itself, and at great length, the facts and evidence in that case. Furthermore, that Court of Appeals did not hesitate to disagree with the findings of the Trial Court in the *Aluminum Case* in substantial respects and reversed the judgment below.

In support of the Government's contention in its "Point II" that RemRand is not entitled to the relief prayed for and that the judgment below should be affirmed, the Government's counsel cite seven cases which are concerned with alien property matters.

The first case cited is *Cummings* v. *Deutsche Bank,* 300 U. S. 115. That case is cited to sustain the rigid "absolute title" theory of the Government, to the GAF stock in this

case. In that case the Supreme Court rejected the narrow interpretation now contended for by the Alien Property Custodian and said:

> "The grant to former alien *enemy owners* of the privilege of becoming entitled upon conditions specified to have returned to them the property of which they had been deprived by the exertion of the war power of the United States was made by the Congress in mitigation of the taking and in recognition of the 'humane and wise policy of modern times'. *Brown* v. *United States*, 8 Cranch, 121, 123." (Italics added)

The *Deutsche Bank* case is clearly distinguishable from the case at bar in that the property seized in that case was *admittedly enemy owned.*

The next case cited in the Government's Brief, *The Antoinetta,* 153 F. 2d 138 (C. A. 3), actually sustains the right of third parties in alien property cases and repudiates the Government's "absolute title" contention. That case involved a proceeding to vest title to Italian vessels seized in American waters during World War II. It is particularly worthy of note that here again in *The Antoinetta* case the Reviewing Court made a careful analysis of the evidence and reversed, in substantial respects, the findings of the District Court. In so doing, the Court of Appeals said:

> "The District Court * * * held that under the vesting order of the Custodian 'the claimant was divested of, and the petitioner (the Custodian) invested with all right, title and interest in the said vessel.' *This is not correct.* The claimants were divested of whatever rights they may have had in the vessels and the Custodian was invested with those rights, *but the rights of third parties were not affected by the vesting order.*" (Italics added).

Certainly by analogy the rights of a third party, which arise pursuant to negotiations carried on with express Government authority, as is the case with RemRand (App. 319-322), can not be nullified by a prior vesting order.

The Government's Brief next cites *Commercial Trust Company* v. *Miller APC,* 262 U. S. 51. An anlysis of this case shows that it is clearly distinguishable from the case at bar, because in that case again, as in the *Deutsche Bank Case, supra,* it was admitted that the seized property was "enemy owned", which took that case out of Section 9(a) of the Act.

Another case involving alien property, cited in the Government's Brief, but which has no bearing in this case, is that of *Societe Suisse* v. *Cummings,* 69, App. D. C. 154, 99 F. 2d 387, cert. den. 306 U. S. 631. That was a suit by the Government to recover property fraudulently returned by the Alien Property Custodian, which the Government proved to have been *enemy owned* at the date of seizure.

The Government also relies on *Clark* v. *Uebersee Finanz Korp,* A.G., 332 U. S. 480. In that case the Government had contended that "the vesting order is absolute and not subject to attack." The Trial Court had sustained that contention and (as in the case at bar) had dismissed the complaint. This Reviewing Court, on appeal, reversed that judgment and reinstated the plaintiff's right to sue. 81 App. D. C. 284, 158 F. 2d 313. The Government took the case to the Supreme Court. That Court again rejected the Government's arbitrary contention and said in rather critical language that this theory, if allowed, would have constituted a "drastic contraction, if not a complete sterilization of Section 9(a)". The contentions of the Government in the case at bar, if adopted by this Court, would go far toward a "complete sterilization" of the rights of any third party who seeks to enforce those rights in a Section 9(a) proceeding.

We would also call attention to the fact that the Government's plan of "settling" this case "*regardless of any rights* which the intervenor has" (Br. p. 2) would have been a violation of the due process clause of the 5th Amendment. The Trial Court particularly recognized that point when it said in its memorandum opinion (App. 395):

> "As I view it, if the intervenor's claims are established it is entitled in equity to the stock. How, then, can this Court adjudge that the plaintiff and defendant are entitled to stipulate for a settlement and dismissal, with prejudice, of the cause of action, regardless of any right the intervenor may have, prior to a determination of his claim? In my view, to do so would be the taking of his property without due process of law".

The two remaining Alien Property Cases cited by the Government *Stoehr* v. *Wallace,* 255 U. S. 239 and *McGrath* v. *Zander,* 177 F. 2d 649 (C. A. D. C.) are so far afield from the issues in this case that they are passed over without discussion.

Before concluding our reply to the Government's Brief on this "Point II", we want to call this Court's attention to the opinion by Judge Pine in this case, which appears on pages 394 to 396 of the Joint Appendix. The Government appealed from these rulings, and this Court sustained RemRand's motion to dismiss that appeal in case No. 10,650. These two opinions of the Trial Court, followed by the action of this Court in dismissing the Government's appeal in case No. 10,650, completely dispose of the "Conclusion" of the Government (Br. p. 8) that it is entitled to settle with Interhandel without regard to the rights of RemRand. RemRand will be clearly entitled to prosecute its action for a declaratory judgment determining its rights to the GAF stock, if and when this appeal is reversed.

RemRand Was Prejudiced by the Government's Activities in This Intervention Proceeding.

1. RemRand's intervention should never have been tried prior to the trial of the main suit of Interhandel. RemRand's rights are predicated on the recovery of the GAF stock by Interhandel. If Interhandel is not successful in

its suit, then the arbitrary action of the Trial Court in severing the intervention and setting it down for immediate trial resulted in RemRand being put to a grossly unjust burden. That burden included the heavy expense of trial, which involved the taking of depositions in France and elsewhere, the bringing of experts in foreign law to this country as witnesses, the translation of many documents in foreign languages, the research into involved questions of foreign law, and finally the making of a record consisting of over 2,000 pages in the Trial Court. Except for the dogged insistence of the Government that RemRand's rights should be cut off without any trial, a separate trial of this third party proceeding would never have been ordered in advance of the trial of the main issue. This is apparent from the memorandum opinion of the Trial Court (App. 396), where it said:

> "I am also informed this morning that great damage may be done to this property if an early disposition is not made of this case. Indeed, I am told it is in the nature of being perishable, and I am in the dilemma of not being able to, as I see it, enforce what the plaintiff and defendants want to do without regard to the intervenor's rights, and at the same time protecting this property from deterioration or loss, or so interfering with the Government's program.
>
> "Now, the suggestion has been made, maybe not directly, but I got the suggestion the intervenor had filed something in the nature of a strike-suit. If that be true, *great loss should not be sustained as a result thereof.*" (Italics added)
>
> "I therefore in addition to denying the Motion" [of the Government to "settle" with Interhandel], "set this litigation between the Intervenor and the Plaintiff down for trial on January 30, 1950."

2. RemRand was allowed barely a month's time (when the Christmas and New Year holidays are considered) to prepare this important and difficult case for trial. Most of that time was consumed by taking depositions of the offi-

cers of both parties. It was obviously unjust and harmful to RemRand to force it to trial in so short a time. A reading of the record constantly discloses the hardships imposed upon RemRand's Counsel because of the lack of time for preparation. Most of the documentary evidence had to be brought from Europe and a large part of it translated into English. Indeed the Court suspended the trial for the purpose of affording Counsel for RemRand the opportunity to take depositions in Paris, France of Mr. Richner and Dr. Ulrich Wehrli, Swiss citizens, who traveled there to appear before the American Consul for that purpose. The Court is reminded that Swiss law prohibits the taking of depositions in that country. Furthermore, we would also remind the Court that these witnesses, as the president and attorney respectively for one of the biggest banks in Switzerland, were subject to the Swiss bank secrecy laws.

3. The Government violated its duty in the controversy between RemRand and Interhandel to such an extent as to prejudice the rights of RemRand. In a third party proceeding under Section 9(a) the Government should stand by as a mere stake holder. Instead of that the Government prejudiced RemRand's rights by its definitely adverse position to that American Corporation. It went so far as to urge upon the Trial Court that RemRand's claim "may hamper, may delay, may even frustrate" the Government in this case. (App. 395) The Government has no right as stake holder of the GAF stock to an overweening ambition to "settle" this case behind the back of the intervening American Plaintiff. The Government should have no interest and no concern whatever in opposing RemRand's claim against Interhandel. If the Government is going to be consistent in its program to Americanize GAF, it ought to be in RemRand's "corner" on this appeal, and not in that of the alien Swiss corporation. By *supporting* instead of *opposing* RemRand's rights, the Government would be advancing its own program to Americanize GAF. Because then, regardless of the final outcome of the Section 9(a) suit on the main issue, this important industrial Corpora-

tion in the chemical and photographic field would surely be Americanized, either through its sale by the Government to American interests, or by the acquisition of the vested stock by RemRand. If the judgment involved in this appeal is not reversed, and then Interhandel should be eventually successful in establishing its right to the GAF stock in the main suit, that important American Corporation will continue to be foreign owned.

II.

REPLY TO INTERHANDEL'S BRIEF.

Interhandel Lists Its Five Main "Contentions." Interhandel's Brief sets out in categorical fashion its six main "contentions" which may fairly be paraphrased as follows:

1. Its "first and foremost contention" is its reliance on the "conditions precedent" idea. (Br. pp. 13 to 28).

2. Its second major contention is its equally strong reliance on the "gentlemen's agreement" idea. (Br. pp. 28 to 31).

3. Its third contention is that Interhandel's Offer "would have been void" under Swiss Blocking Laws—if it had ripened into a contract. (Br. pp. 31 to 33).

4. Its fourth contention is an effort to avoid Interhandel's repudiation of its Offer by saying that "the Offer was made to RemRand and could be accepted only by RemRand". (Br. pp. 33 to 36).

5. Its fifth major contention is that "the Offer and purported Acceptance are null and void and unenforceable"—it being contended that they are in violation of the American Blocking Law. (Br. pp. 36 to 39).

6. Its sixth and final contention concerns the exclusion and admission of evidence by the trial Court. (Br. pp. 39 to 47).

These six main Interhandel contentions will now be taken up and refuted in their order.

A Short Analysis of the Facts to Dispel Confusion.

Interhandel's Brief attempts to confuse the issue as to the contractual relations of the parties. As was pointed out in our main Brief, the modalities or terms used in Swiss contract law differ from those with which we are familiar, but "a rose by any other name is still the same".

The simple facts are that Interhandel, on June 6, 1946, entered into a binding unilateral agreement which RemRand could make bilateral by taking certain action within the time stipulated, which was originally June 30, 1946, but was later extended. During the time limit fixed by the extensions RemRand took action which it contends made the contract bilateral and binding upon both parties. A record of Interhandel's original commitment is to be found in their corporate records prior to the time it was submitted orally to the RemRand representatives and is referred to time and time again in their corporate minutes as the negotiations continued. These written records made by Interhandel should be construed most strongly against them and should not be varied by parole evidence of their officers some four years later.

The difference in the two positions is whether the five conditions were to be performed prior to the bilateral contract coming into existence or whether they were to be performed between the time the transaction became a bilateral one and the time of settlement or performance. The witness Germann admitted that the payment of the $25,000,000 was not a condition precedent to the agreement becoming bilateral (App. 252).[1] The only one of these conditions

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[1] The witness Germann's testimony is as follows:

The Court: Q. Now, wherein in that declaration is Remington required to transmit the $25,000,000 within the time limit?

Witness Germann: A. I do not think that the actual payment was necessarily within the time limit. The offer was to be made within the time limit. The offer was to be made within the time limit, and that was the reason why on July 25, in that circular resolution, we asked them to

which was in fact precedent to a bilateral contract between the parties was that RemRand's commitment to purchase must be duly licensed. This, we contend, was met by the letter of December 23, 1946 from John S. Richards, Acting Director, Foreign Funds Control (App. 321-322).

Like all Gaul this transaction was divided into three parts: (1) the unilateral commitment by Interhandel, referred to as its declaration of readiness/willingness; (2) the binding commitment of RemRand made pursuant to a license granted by the Government; and (3) the performance or settlement which was to take place if, as and when the GAF stock was returned to Interhandel by the Government, together with the 80,000 shares of Interhandel's own stock, approximately $2,000,000 in cash, and the removal of all discriminations not only against Interhandel, its officers, and directors but its associated and affiliated companies, principal stockholders and their officers and directors.

Interhandel takes a contrary view and insists the District Court's finding that these were "conditions precedent" is supported by the evidence. It is our contention that if Interhandel's astute officers had intended that the meticulously phrased and laboriously outlined terms of their unilateral commitment were to be regarded as "conditions precedent" to the contract becoming bilateral by RemRand making a commitment on its part, they would have said just that. This they did not do. Indeed had they done so they would have acted contrary to the explicit instructions as outlined in the May 16 and May 18, 1946 Resolutions of their Board which authorized their officers to make this unilateral commitment. (App. 336-7)

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have their offer equipped with a guarantee by a Swiss bank for the payment of the $25,000,000.

Q. Then the time for the payment of the $25,000,000 was not definitely agreed upon?

A. It could be reasonably later.

Q. Then you were in error when you stated to Mr. Burroughs a few minutes ago that the $25,000,000 under the original agreement would have to be in Basle in the form required by June 30th?

A. Yes, Your Honor, I was in error * * *

The phrase "main preceding conditions" appears for the first time in Interhandel's Minutes of May 17, 1947. Nevertheless Interhandel's counsel uses the phrase "conditions precedent" thirty-three times in their Brief, as if mere repetition and iteration will have some magical effect upon this Court. We maintain that the conditions, with the exception of the one pertaining to the licensing of RemRand's commitment, had to be met before Interhandel was required to deliver the GAF stock and not as Interhandel contends before RemRand could make its commitment. As between the parties the phrase "conditions precedent" was never mentioned or even suggested until after RemRand's commitment of May 6, 1947; and when Interhandel began to lay the groundwork for this controversy, it was then that the "conditions precedent" to RemRand's commitment was first mentioned in Interhandel's cable to Mr. Rand on May 17, 1947 (App. 14).

It was reversible error for the trial Court to accept, *in toto,* this purely argumentative contention of Interhandel's witnesses that the performance of these conditions was precedent to RemRand's commitment. If Interhandel prevails in its Section 9(a) suit, it will recover not only its GAF stock but its Interhandel shares and bank accounts and thereupon both parties will be in a position to perform the contract, but if the final determination of the Section 9(a) suit is against Interhandel neither party has any claim against the other.

The declaratory judgment sought by the Appellant, RemRand, is just that, namely, a judgment that if and when Interhandel receives a return of the GAF stock by final judgment in its 9(a) suit, or otherwise, Interhandel shall be required to perform its part of the bilateral agreement, namely, to deliver the GAF shares to RemRand against payment of $25,000,000 cash. This is the judgment which in equity and good conscience should have been entered in the Court below and the entry of such a judgment should be directed by this Court.

We trust that this analysis will dispel much of the confusion which beclouded the mind of the trial Court in appraising the undisputed facts as shown by the documentary evidence.

The Law of Conditions Precedent.

Before leaving this question of "conditions precedent" we would like to direct the Court's attention to the fact that as great an authority on the Law of Contracts as Professor Williston recognizes that this question has been and is a source of "confusion of thought". See Williston, The Law of Contracts, Rev. Ed. 1936, Vol. 3, Sec. 666, from which we quote as follows:

> "In the law of contracts conditions may relate to the existence of contracts or to the duty of * * * performance under them. It is a source of *confusion of thought* that the word 'condition' is frequently used without exact recognition of what the supposed condition qualifies. Generally in contracts, when reference is made to conditions, what is meant are conditions which become operative, *after formation of the contract.*" (Italics added)

We would also direct the Court's attention to the case of *Hurt* v. *New York Life Insurance Company,* 51 F. 2d 936 (C. A. 10) in which Judge Phillips at page 938 said:

> "In the law of contracts, a condition precedent may be either a condition which must be performed before the agreement of the parties shall become a binding contract (13 C. J. p. 564 Sec. 532), or a condition which must be fulfilled before the duty to perform a provision of an existing contract arises. * * * *In the latter class of cases, the condition is not a condition precedent to the existence of the contract, but is a prerequisite to liability thereunder.*" (Italics added)

Another Federal case sustaining this view and in some respects analogous to the case at bar, is *Kashishke* v. *Baker,*

146 F. 2d, 113 (C. A. 10). In the course of its opinion the Court said:

> "Concededly parties may make a contract dependent upon future contingencies * * * *Courts, however, do not favor such a construction and will not construe stipulations in a contract as conditions precedent unless required to do so by the plain, unambiguous language of the contract* (*Southern Surety Co.* v. *McMillan Co.*, 58 F. 2d 541); and ordinarily a court of equity will not place such a construction upon the provisions of a contract, especially where it will work a forfeiture." (Italics added).

The case at bar presents a clear forfeiture if the judgment of the trial Court is affirmed.

No Gentlemen's Agreement Here.

When counsel for Interhandel state there is no evidence to contradict the Court's findings that their client's unilateral commitment of June 6, 1946 was a "gentlemen's agreement" they ignore the documentary evidence contained in Interhandel's own Minutes, and quoted in our main Brief, pp. 10-13.

The words "gentlemen's agreement" were not used on June 6, 1946 and do not appear even in Interhandel's own Minutes until January of 1947. A "binding offer of sale" is something entirely different from a "gentlemen's agreement" and Interhandel's own written record shows that it was making such an offer (App. 335).

The Law of "Gentlemen's Agreements".

The law of England on this subject is stated in Pollock's work, "The Principles of Contract" (12th ed., 1946, p. 3):

> "Even the most formal expression of an agreement cannot operate as a contract if the parties, *in the same instrument, explicity declare* that they do not intend it to have any such operation, and that the agreement is to be binding only in honor". (Italics added).

While Pollock in the text quoted does not use the term "gentlemen's agreement" he does use the expression that "the agreement is to be binding only in honor", which means the same thing.

Our own outstanding authority on the Law of Contracts, Professor Williston, states in his latest work (Rev. Ed. 1936, Vol. 1, p. 5):

> "Sec. 2. Agreement. * * * Where an instrument *expressly states* that it is merely a gentleman's agreement it will be treated as *not* creating contractual duties." (Italics added)

These two leading authorities are in accord that in order to make an agreement which is unenforceable, the "instrument" evidencing the agreement must expressly or explicitly so state. The instrument which evidences Interhandel's commitment is its corporate Minutes of May, 1946 (App. 334-337); and RemRand's commitment of May, 1947 is evidenced by its cablegram of May 5, 1947 and letter of May 6, 1947 (App. 326-329). In none of these instruments is there any reference to "gentlemen's agreement" or to an agreement "binding only in honor".

Validity of the Contract Under Swiss Blocking Laws and Trading With the Enemy Act.

In the interest of brevity we are combining our reply to Interhandel's contentions dealing with Swiss Blocking Laws and United States Trading with the Enemy Act.

The erroneous character of the judgment of the District Court is strikingly evidenced by the complete failure of Interhandel to refute RemRand's demonstration that, contrary to the findings and conclusions of the District Court, the offer and acceptance were valid both under the Swiss Blocking Regulations and the United States Trading with the Enemy Act.

In our Brief (pp. 42-44), we showed conclusively that according to the *undisputed testimony* in the case the con-

tract in question was valid under the Swiss Blocking Regulations, since the property involved was to be transferred only if and when both the Swiss and American blocking restrictions were lifted. In its attempted reply to this argument Interhandel (Brief, pp. 31-33) has simply chosen to ignore this undisputed evidence, including the testimony of its own legal expert given in response to direct questions by the trial Judge (App. 213, 214). Interhandel's argument is so completely unresponsive as strongly to suggest that Interhandel no longer seriously disputes RemRand's position on the point.

Interhandel's discussion of the applicability of the Trading with the Enemy Act (Br. pp. 36-39) is equally unresponsive and perfunctory. It ignores completely that RemRand was *authorized and licensed* by the Treasury Department to enter into the contract in question (App. 299-301). Interhandel merely speculates that this Treasury Department letter of December 23, 1946, "may have meant" (Br. 38) something different from what it said in plain English.

In an apparent effort to bolster this specious observation, Interhandel resorts to the argument that the license granted to RemRand should have been issued by the Office of Alien Property, rather than by the Treasury Department. Not only does this argument ignore the undisputed evidence that the Treasury letter of December 23, 1946 was issued only after consultation with the Department of Justice whose concurrence must, therefore, be presumed, but it is in the teeth of the express provisions of Executive Order 9193, as amended (7 Fed. Reg. 5207), allocating functions between the Alien Property Custodian and the Treasury Department. Executive Order 9193, as amended, which was specifically designed to foreclose the assertion of the spurious defense now brought forward by Interhandel, provides in part as follows:

> "Any orders, regulations, rulings, instruction, licenses or other actions issued or taken by any person, agency or instrumentality referred to in this Execu-

tive Order, shall be final and conclusive as to the power of such person, agency or instrumentality to exercise any of the power or authority conferred upon me by sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended; * * *. No persons affected by any order, regulation, ruling, instruction, license or other action issued or taken by either the Secretary of the Treasury or the Alien Property Custodian shall be entitled to challenge the validity thereof * * * on the ground that pursuant to the provisions of this Executive Order, such order, regulation, ruling, instruction, license or other action was within the jurisdiction of the Alien Property Custodian rather than the Secretary of the Treasury or vice versa.

"13. Any regulations, rulings, instructions, licenses, determinations or other actions issued, made or taken by any agency or person referred to in this Executive Order, purporting to be under the provisions of this Executive Order or any other proclamation, order or regulation, issued under sections 3(a) or 5(b) of the Trading with the Enemy Act, as amended, shall be conclusively presumed to have been issued, made or taken after appropriate consultation as herein required and after appropriate certification in any case in which a certification is required pursuant to the provisions of this Executive Order."

It is significant to note that the Brief of the Government does not in any way suggest or infer that the contract in question was not duly authorized or licensed under the Trading with the Enemy Act. This fact can only be taken to mean that the Government has concluded that the argument advanced by Interhandel is completely without merit.

In these circumstances there can be no question that the District Court erred in holding that the contract in question is unenforceable because no license or authorization was ever obtained under the Trading with the Enemy Act.

Interhandel Again Reneges on Its "Group" Offer.

Interhandel's Brief (p. 33) again reneges on the "group" Offer of June 1946 by saying: *"There was no effective acceptance of Interhandel's Offer"*, etc. Interhandel goes on to say that "only on ten occasions is the word 'group' used", in the Interhandel Minutes, as if that were an important point. The significant point is that the term "group" was first used in the Minutes of the meetings of May 16 and 18, 1946 (App. 335-336) when the Interhandel Directors *authorized* the Offer to the RemRand "group", it was repeated in the Oral Offer of June 6, 1946 (App. 391); and was again repeated in the Minutes of April 21, 1947 (App. 355) when "the 15 days notice" to cancel the Offer (App. 358) was given by Interhandel. There were in fact more than ten instances when the "group" idea was expressed in Interhandel's writings, but the actual number is immaterial. Certainly it was used often enough to make it clear that Interhandel, who was to be paid cash for the GAF stock and was not concerned whether the stock went to the parent company or to AA&CC. The latter was admittedly a subsidiary of RemRand and its action bound the parent company (App. 42).

For Interhandel in its Brief again to attempt to repudiate its "group" Offer to RemRand shows how far this Swiss concern is forced to go to defend itself in this intervention proceeding. It feels compelled to renege on its own repeated affirmation of the "group" Offer.

Interhandel's Contentions Concerning the Exclusion and Admission of Certain Evidence.

Interhandel's Brief (pp. 9-47), attempts at considerable length and with a labored effort to refute the argument raised in our main Brief (pp. 32-37) on the question of the exclusion and admission of evidence. We are willing to submit these questions to this Court on the argument presented in our main Brief because we feel that nothing has

been added by the long discursive argument of Interhandel on the points.

One thing, however, we wish especially to mention. Interhandel concludes its argument in its Brief (p. 47) by again coming back to the Whiteford testimony which we said was an effort to vilify, slander and defame Mr. Rand (Our Brief, p. 41). We repeat that permitting this witness so to testify and to use vituperative and undignified language, was highly improper and constituted prejudicial error.

CONCLUSION.

In view of the foregoing, we submit that the judgment of the Court below should be reversed with directions that the Intervenor is entitled to a declaratory judgment in accordance with the prayer of its amended petition or that a new trial be granted.

Respectfully submitted,

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